



# BarNews

WASHINGTON STATE

THE OFFICIAL PUBLICATION OF THE WASHINGTON STATE BAR ASSOCIATION

WSBA

# STRUCTURE

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### FEATURE

The legacy of civil rights attorney Carl Maxey / p. 28

### COLUMN

The ethics of settlement negotiations / p. 16

### FEATURE

Creating more inclusive work environments for coworkers and clients / p. 44

Comprehensive coverage on the evolution of your Bar Association and the ongoing ETHOS process  
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**JUNE 2022**  
VOL. 76, NO. 5



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# On the Docket

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## All About Bar Structure

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- ➔ **A Q&A** with University of Connecticut School of Law Professor Leslie Levin.
- ➔ **A timeline** of the history of the regulation of the practice of law in Washington.
- ➔ **Two perspectives pieces**—one urging the WSBA to retain its current structure, and one calling for structural change.

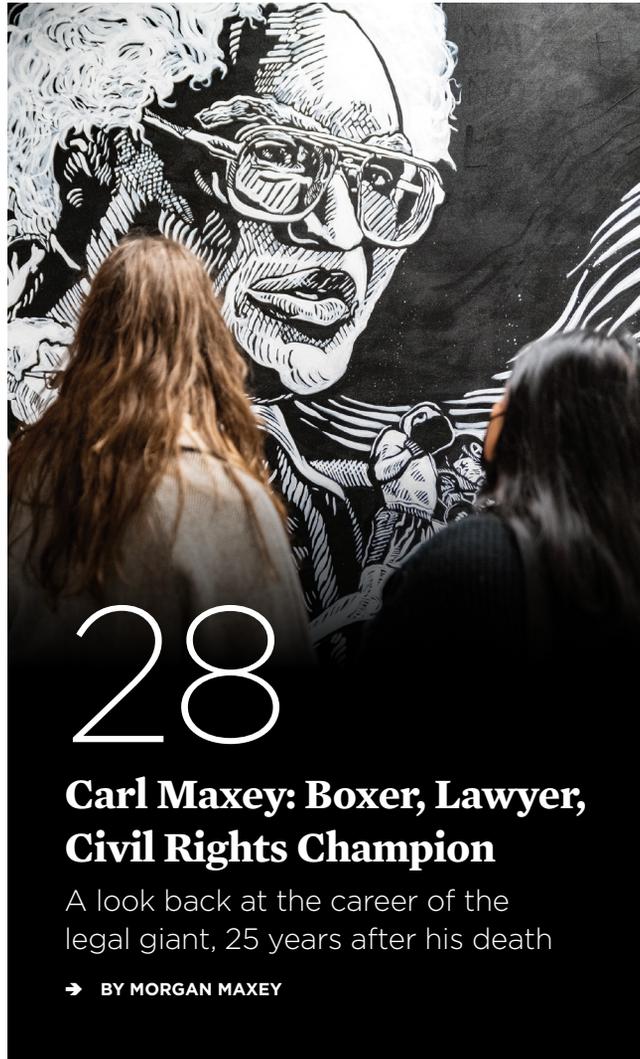


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# From Structure to Pronouns

If you are reading this, you may already be paying attention to the renewed discussions around mandatory and voluntary state bar associations. You may have attended an ETHOS (Examining the Historical Organization and Structure of the Bar) meeting. You may have already shared your thoughts with the Board about potential changes to the structure of the WSBA. But if you haven't, I encourage you to read this

**Kirsten Abel** is the editor of *Washington State Bar News* and can be reached at [kirstena@wsba.org](mailto:kirstena@wsba.org).



**ON THE COVER**  
Staff illustration;  
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month's cover package, starting on page 32, and consider submitting a comment to the WSBA Board of Governors at [boardfeedback@wsba.org](mailto:boardfeedback@wsba.org). You don't need to be an expert. All opinions and comments are welcome.

Another article in this issue that I encourage you to read is "The Importance of Not Misgendering Anyone: Creating an Inclusive Environment for Coworkers and Clients" on page 44, written by WSBA Equity & Justice Lead Imani Shannon. Read it with an open mind. Read it with the intention to make at least one change, in your personal life or in your workplace. That change could be as simple as starting to introduce yourself at meetings with your name and pronouns ("My name is Kirsten, and I use she/her pronouns"), altering an intake form to ask clients to share their

pronouns, or adding your pronouns to your email signature (not "preferred" pronouns—as I learned reading the article, pronouns are not a preference for any of us, but a marker of our identity, and I edited my email signature accordingly to delete "preferred"). These simple examples help to normalize the use of correct pronouns, remind us not to assume a person's gender identity, and acknowledge the humanity of our gender-diverse coworkers and clients.

Also in this issue: a column on settlement ethics (page 16), the LGBT Law Section Spotlight (page 24), a look back at the legacy of civil rights lawyer Carl Maxey (page 28), and a Write to Counsel column on how to make better digital presentations (page 20). [BN](#)

Also of note in this issue, a look back at the legacy of civil rights lawyer Carl Maxey.

*Washington State Bar News* will inform, educate, engage, and inspire by offering a forum for members of the legal community to connect and to enrich their careers.

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# Inbox

## LET US HEAR FROM YOU!

We welcome letters to the editor on issues presented in the magazine. Email letters to [wabarnews@wsba.org](mailto:wabarnews@wsba.org).

Letters to the editor published in *Bar News* must respond to content presented in the magazine and also comply with Washington General Rule 12.2 and *Keller v. State Bar of California*, 496 U.S. 1 (1990). \**Bar News* may limit the number of letters published based on available space in a particular issue and, if many letters are received in response to a specific piece in the magazine, may select letters that provide differing viewpoints to publish. *Bar News* does not publish anonymous letters or more than one letter from the same contributor per issue. All letters are subject to editing for length, clarity, civility, and grammatical accuracy.

\*GR 12.2(c) states that the WSBA is not authorized to “(1) Take positions on issues concerning the politics or social positions of foreign nations; (2) Take positions on political or social issues which do not relate to or affect the practice of law or the administration of justice; or (3) Support or oppose, in an election, candidates for public office.” In *Keller v. State Bar of California*, the Court ruled that a bar association may not use mandatory member fees to support political or ideological activities that are not reasonably related to the regulation of the legal profession or improving the quality of legal services.

## Response to ‘Regarding Race and Directories’

I write in direct response to [Inez] Petersen of Enumclaw [“Inbox,” April/May *Bar News*]. She deeply fails in her analysis and judgments regarding Terra Nevitt’s article [“Black History Month: What is Our Pathway Forward?” February 2022 *Bar News*] and the 2022 Judges of Color Directory. She has answered for herself every one of the rhetorical questions set out in her letter. However, I want Ms. Petersen to know and hopefully understand and appreciate that many, many other thoughtful, reasoned answers exist.

I particularly want Ms. Petersen and others to know

and understand that reading a few books and authors, [Robin] DiAngelo and [Ibram X.] Kendi included, does not qualify one as well-read on racism or other social structures in our profession and in our great America. Ms. Petersen clearly does not understand author Kendi when she interprets his writing as meaning that “white [people] are unilaterally oppressors and non-white [people] are the oppressed.” In kindness, I suggest that Ms. Petersen and others working to create a better profession, country, and world read the book, *The End of Bias: A Beginning: The Science and Practice of Overcoming Unconscious Bias* by Jessica Nordell. Anyone who reads (and understands) Nordell’s book would be able to join in

the journey toward diversity, equity, and inclusion.

I disagree that a Judges of Color Directory is racist. I do agree that society needs the best judges serving on every level of the court.

Ms. Petersen’s belief that a Judges of Color Directory “by its existence infers that white judges cannot be fair minded and race-blind when administering court proceedings” is plain wrong. Judges of color may have many honorable and grounded reasons to be listed in such a directory and some may not actually want to be listed. Regardless, such a directory serves as a community resource, provides a public service, gives personal and public identification of such judges, can be a matter of honor and pride, provides increased access to justice, can further diversify the bench, and, indeed, is in proper alignment with the general public, the community which each of us serves as lawyers or judges. I list just a few good reasons that tax dollars or bar dollars should be used for such a publication.

In her ultimate rhetorical question and her answer to it, Ms. Petersen reveals her lack of a basic, core understanding of current society, systems, institutions, and, perhaps, even the law. Ms. Petersen’s suggestion that the 2022 Judges of Color Directory “be open to participation by all the judges” and that otherwise such a directory “violates laws that forbid discrimination” belies a lawyerly, well-reasoned

opinion. Ms. Petersen would benefit herself most by rethinking her claims, questions, and answers. She may also want to take greater care with her language in doing so.

**Sharon Sakamoto**  
*Shoreline*

## Consider the Evidence

[In the] March 2022 issue of *Bar News*, Tom Stahl of Ellensburg responds to Terra Nevitt’s column on Black History Month. He states that Nevitt “neglects to define ‘systemic racism’ or prove that it exists.” Systemic racism is described in *The Color of Law* by Richard Rothstein. He incontrovertibly proves that it was de jure segregation—the laws and policy decisions passed by local, state, and federal governments—that actually promoted the discriminatory patterns, also pursued by communities, that continue to this day. One proof of systemic racism documented by Rothstein is the disparity in wealth between Black and white families that continues to this day.

On June 4, 2020, *The Washington Post* reported that the Black-white economic divide is as wide as it was in 1968. In 1968, a typical middle-class Black household had \$6,674 in wealth compared with \$70,786 for the typical middle-class white household, according



## WRITE FOR US

### Book Reviews Needed

What's that one book you can't shut up about, the thing that everyone just *has* to read? We want to help you spread the word. Submit a review of no more than 150 words on any genre (law-related books welcome but not mandatory) to [wabarnews@wsba.org](mailto:wabarnews@wsba.org) or here: <https://forms.gle/FDfbqdDbuC75ahs17>.



to data from the historical Survey of Consumer Finances that has been adjusted for inflation. In 2016, the typical middle-class Black household had \$13,024 in wealth versus \$149,703 for the median white household, an even larger gap in percentage terms. [More information available at [www.washingtonpost.com/business/2020/06/04/economic-divide-black-households/](http://www.washingtonpost.com/business/2020/06/04/economic-divide-black-households/).]

**Paul Majkut**  
*Portland, OR*

### Enough Is Enough

The April/May summary of the Board Governors meeting ["On Board," April/May *Bar News*] states that: "[t]he Board has been considering how unreliable and delayed service by the United States Postal System might impact legal processes," and, in particular,

the summary refers to the Service of Process rule. The action taken by the Board was to ask the WSBA Court Rules Committee to take up the issue.

After the appointment of Postmaster General Louis DeJoy, the United States Postal Service went from reliable to unreliable. This appointment came at the same time as the 2020 election cycle and clear interest in the American public to vote by mail-in ballot because of the pandemic. What issue? Rather than try to work around it, why isn't this and other bar associations suing DeJoy as the postmaster general for obvious sabotage? It is time to say it like it is. There is no doubt the now unreliable service is impacting legal processes, and now people are feeling they have to use a third-party carrier. Who bears the extra cost? The average American does one way or the other.

**Helen Nowlin**

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# WASHINGTON STATE BarNews

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*Washington State Bar News* relies on submissions from WSBA members and members of the public that are of interest to readers. Articles must be the author's original work. Attribution must be provided for any non-original work cited, quoted, or otherwise incorporated into submitted articles. Articles should not have been published elsewhere. Upon publication in *Bar News*, articles become the property of the WSBA. Articles typically run 1,400-2,100 words. Please include a brief author's biography, with contact info, at the end of the article. High-resolution graphics and photographs (preferably 1 MB in size) are requested. Authors should provide a high resolution digital photo of themselves with their submission. Send story ideas and articles to [wabarnews@wsba.org](mailto:wabarnews@wsba.org). The editor reserves the right to edit articles as deemed appropriate. The editorial team may work with the writer, and the editor may provide additional proofs to the author for review.

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Scout always made Pop Pop smile and smiles were hard to come by at the end. We wanted him to be happy but the hospital said, "Absolutely no dogs allowed." I don't know what Tim said or did, but he arranged for us to bring Scout in before Pop Pop passed. I've never seen him happier and more at peace than when he was sitting with his beloved dog. Tim could make us millions of dollars managing our portfolio, and he has, but he'll never give us anything more valuable than that moment because true worth is in **the little things**.

— David, Santa Barbara



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# NW Sidebar

THE VOICES OF WASHINGTON'S LEGAL COMMUNITY



## New Advisory Opinion on Malpractice Insurance Disclosure

In September 2021, the Washington Supreme Court adopted amendments to RPC 1.4, which now require disclosure regarding minimum malpractice insurance levels. With some exceptions, this new [...]

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## WA Court of Appeals Addresses 'Professional Judgment' Rule

Division I of the Washington Court of Appeals recently addressed the "professional judgment" rule in *Angelo v. Kindinger*, 2022 WL 1008314 (Wn. App. Apr. 4, 2022). The rationale of the [...]

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A NOTE FROM THE WSBA EXECUTIVE DIRECTOR

# Be an Influencer

## What Is the Future for the State Bar?

**M**y column this month is about decision-making. Side note: Did anyone read that article in *The Atlantic* a few years ago, “There’s No Such Thing as Free Will”?<sup>1</sup> The upshot is that scientific discovery is leading to the conclusion that behavior is entirely predictable and a product of cause and effect more than free will. I found the concept so disturbing that it’s never really left me. Sometimes when I have a hard decision I wryly tell myself, “Whatever decision you’re going to make, you’ve already made it.” The article also highlights the darkness that can follow when folks let go of their belief in free will. It’s an interesting read!

Existential questions aside, we are all constantly engaged in decision-making. Organizations like the WSBA thrive or struggle by the sum of their decisions and those decisions are made all the more complex by all of the people involved and potentially impacted.

We at the WSBA have dealt with the consequences of forging ahead with an initiative built on a shaky decision-making foundation. I bet you have, too. Those consequences include blind spots when people with key pieces of expertise are not consulted, lack of support when stakeholders are not included, repeated work or arbitration when it is not clear who has final decision authority, and loss of time and confidence as logistics swirl. Improving our approach to decision-making has been a priority of the leadership team at the WSBA this past year. I’d like to offer a peek at a decision-making model we have put into use here at the WSBA that has so far yielded improved efficiency and results. I also want to tell you about how that model is helping us work through a critical decision about the future of the state Bar. (Spoiler alert—it’s this month’s cover feature, and YOU have a major role in the process.)

### RAPID® MODEL EXPLAINED

The decision model is called RAPID®<sup>2</sup>, and the acronym is not ironic. The model is meant to streamline an organization’s decision-making process through role clarity and accountability. It calls for agreement ahead of time on the *who* (which drives the *how*) of a decision and its implementation: the **R**ecommenders, the **A**greers, the **P**erformers, the **I**nputters, and the **D**eciders. When a decision needs to be made, the recommenders are responsible for making a proposal or offering solutions. The agreeers are intended to sign off on any recommendation before it moves forward to the decision maker, and if they veto a solution, they work with the recommenders on an alternative. Inputters are those who must be consulted in developing the recommendation, and they are usually

stakeholders and/or experts in the topic at hand. While the recommenders do not have to act on the input, they must take the input into account. Ultimately, there is the decider—the single point of accountability with authority to make the decision. Finally, the performers are the people who will implement the decision.

This review is definitely a simplification, but the beauty of the model is its simplicity. The model has helped us to make decisions more quickly and to shed light on the multitude of mismatched assumptions we all carry. Left unvoiced and unresolved, these assumptions are killers of the decision/initiative itself as well as overall organizational culture. If you think any of the RAPID® model could be of use, please research online; there are many related trainings and templates.



**Terra Nevitt**

*WSBA Executive Director*

Nevitt can be reached at [terran@wsba.org](mailto:terran@wsba.org) or 206-727-8282.

### RAPID® IN ACTION: THE FUTURE OF THE WSBA

For a look at the RAPID® model in action, let’s consider a big (BIG!) decision with potentially profound impacts on the state Bar, its members, and the legal profession: Should we change the structure or scope of work of the WSBA? We are currently in the midst of an eight-month process

### SIDEBAR

## Let Your Voice Be Heard

Your input is critical as the WSBA Board of Governors decides whether to recommend a structural change to the Washington Supreme Court. To provide feedback, you can attend an upcoming meeting (live or remotely) or email [boardfeedback@wsba.org](mailto:boardfeedback@wsba.org). Two important questions for all members are:

1. What programs, services, benefits, and supports does the WSBA provide that are important for you, your practice, and the legal profession?
2. What challenges does the current bar structure present, if any?

Want to learn more about the bar-structure study process and what’s at stake? Turn to page 32 for several points of view, and for more information visit [www.wsba.org/ETHOS](http://www.wsba.org/ETHOS). 

to answer that question. One impetus of this structure study is a national flurry of constitutional legal challenges to the mandatory-bar structure. Another is the potential to think more expansively about different structures that could better support our state Bar's mission, including access-to-justice and law-improvement efforts. For more information, turn to page 32 in this magazine.

The issues at hand are complex enough. Layer on any confusion about the decision-making roles and authority and process—and this has the potential to be a quagmire! Thankfully, RAPID® provides a good framework for understanding. Here's how it shakes out:

- **Recommenders:** The WSBA Board of Governors. The Washington Supreme Court and the Board of Governors have tracked this issue closely for several years, and the court in December 2021 asked the Board to devise a process to make a recommendation back to the court about whether and how the state Bar ought to change its mandatory structure.
- **Agreers:** The WSBA staff is working in close partnership with the Board to confirm the (financial, legal, and logistical) feasibility of any recommendation they might consider.
- **Performers:** Under the authority of the Washington Supreme Court, the WSBA staff will carry out implementation of any decision to change structure.
- **Inputters:** There are many, including other mandatory bars, that have changed or are considering structural changes. However, the most important input in the process will come from YOU, the members.
- **Deciders:** The Washington Supreme Court will receive the Board of Governor's recommendation and make the final decision.

I want to emphasize that we are at a point where the Inputters—YOU—carry an incredible amount of influence. We are at an ideation phase, and your input will be, perhaps, the most important determination of whether the Board of Governors even

## You do not have to be deeply embedded in the bar-structure case law or WSBA history to make a difference.

begins to move into the next phase, which could include springboard proposals for change.

You do not have to be deeply embedded in the bar-structure case law or WSBA history to make a difference. We are asking for your perspective, as a colleague in the legal community, about what programs, resources, and supports you consider to be critical for the profession, and how the state Bar might change—or *not* change—to do those things best.

An example often pointed to is legislative work. Our sections find strength in number and name-association under the WSBA umbrella as they advocate to improve laws, but sometimes the accompanying restrictions—imposed on the WSBA by court rules and the First Amendment—can be limiting. Is there a way to reimagine the provenance of sections and their affiliation with the state Bar to get the best of both? Or can we live with the balance that we must strike in a mandatory bar association?

### THE TIME IS RIPE

If nothing else, please take a few minutes to familiarize yourself with what is happening and what is at stake in the structure-study process. You are as qualified as any and all other legal practitioners to have an opinion about the future of your state Bar, and the time is ripe, now, to be heard. It will make a difference to the recommenders and the deciders. And as you approach your next big decision, I encourage you to take the time to invest in role clarity and expectations as the first step. Maybe the RAPID approach can work for you, too. 

### NOTES

1. [www.theatlantic.com/magazine/archive/2016/06/theres-no-such-thing-as-free-will/480750/](http://www.theatlantic.com/magazine/archive/2016/06/theres-no-such-thing-as-free-will/480750/).
2. RAPID® is a registered trademark of Bain & Company, Inc.



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# Some Thoughts on Ageism, the WSBA, and Free Expression

I have had so many ideas for an article this month that it has been challenging to choose one over the other. The topics range from freedom of expression, to leadership, to ageism. Maybe I should cover each of them?

Let's start with freedom of expression—the First Amendment. If you read *Washington State Bar News* with any regularity (as you are now doing), you will be pleased to know that each entire issue is reviewed before publication by not only the editorial staff of the publication, but also by WSBA legal counsel, the executive director, and somebody from the WSBA Equity and Justice team. Why is that, you ask? What I have learned is that the purpose of the review, which has been going on for a number of years, is to help make sure that the publication is in compliance with GR 12.2(c); is consistent with messaging from the WSBA across its many programs; and that the magazine is not printing something that might be offensive.

However, it was only last month that I learned for the first time about this process. I don't mind that my draft articles are reviewed for fact checking, punctuation, grammar, and possible legal concerns. What is concerning and possibly concerns any author, is whether the deeper review constitutes a different form of restriction. I'm pretty sure that almost all content is written for WSBA by persons with a law background. Perhaps, their judgment about what to write and how to say it isn't sufficient. Fair enough. What is striking is the lack of transparency and disclosure about this process. Should I or any unaware author be troubled by this extended review? Is this what you, as a WSBA *Bar News* reader, expect? Moving forward, I hope that your WSBA will do a better job of disclosing the review process in a more transparent manner.

Freedom of expression is a concept much older than the First Amendment. A recent article from the *Wall Street Journal*,<sup>1</sup> written about the great poet and intellectual John Milton, has some Milton quotes worth repeating. In Milton's nearly 18,000-word essay entitled "Areopagitica," one of the earliest essays on the concept of free expression, Milton said: "Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties."<sup>2</sup> John Miller, the author of the *Wall Street Journal* article, also quoted Milton as saying "... hee who destroyes a good Booke, kills reason it selfe [sic] ...,"<sup>3</sup> and further, that Milton claimed restricting free expression "will be to the discouragement of all learning, and stop of Truth."<sup>4</sup>

Let's trust that we all remember how important freedom of expression is to open, honest, and healthy debate of any and all issues. I have been assured, so far, by conversations with WSBA staff that there is no intention to adopt limitations on freedom of expression.



**Judge Brian Tollefson (Ret.)**

*WSBA President*

Tollefson is a principal at Black Robe Dispute Resolution Services, PLLC. He can be reached at TollefsonBOG@outlook.com.

I'm hoping that your Board of Governors agrees. I would be disappointed if somehow your WSBA was viewed like the British Parliament was when it passed the Licensing Order of 1643, a form of prior restraint that remained in force until 1695.<sup>5</sup>

Let's move on to the issue of WSBA leadership. What should be the role of your WSBA President? The WSBA bylaws have this to say:

The President is the chief spokesperson of the Bar and presides at all meetings of the Board of Governors. The President has the authority to: set the agenda however that authority is secondary to the authority of the Board of Governors at any Board meeting to take action on any issue raised by a duly seconded motion; take action to execute the policies established by the Board of Governors; assign Governors as liaisons to Bar sections, committees, or task forces, specialty bar associations, and other law related organizations; and to appoint task forces, committees, or other ad hoc entities to carry out policies established by the Board of Governors. The President also performs any other duties typically performed by an organization's President. The President may vote only if the President's vote will affect the result.

The president doesn't have a role in the day-to-day management of the WSBA. Day-to-day management of the WSBA is the province of the WSBA Executive Director. But if the Bar president is to be a position worth pursuing, especially as an uncompensated volunteer spending anywhere from 30 to 35 hours a week on WSBA-related activities, then this job description needs amending because it looks to many like this job description makes your WSBA president not much more than a glorified ribbon-cutter. Maybe during the ETHOS structure discussions the Board of Governors can make up its mind: Does this organization want a glorified ribbon-cutter or someone who will lead your organization? What do you want or expect?

This leads me to my last topic for this issue of the President's Corner—an overlooked area of bias, especially implicit bias: ageism. In recent years there has been a lively discussion of the topic called

“implicit bias.” I do not know who coined the phrase. However, implicit bias has been defined as an “unconscious bias that manifests in expectations or assumptions about physical or social characteristics dictated by stereotypes that are based on a person’s race, gender, age, or ethnicity. People who intend to be fair, and believe they are egalitarian, apply biases unintentionally.” (Emphasis added.)<sup>6</sup>

The WSBA has what I consider to be a robust effort to promote diversity, equity, and inclusion (DEI). At the WSBA, there is the Diversity Committee; the Equity and Disparity Work Group; an extensive list of DEI-focused CLE webinars<sup>7</sup>; and other DEI resources.<sup>8</sup> There is even an Equity and Justice Department employed at the WSBA.<sup>9</sup>

Part of the WSBA’s DEI effort is to recognize and acknowledge the concept of implicit bias and how to interrupt and mitigate it.<sup>10</sup> This is all very important work that I applaud and support. However, in my opinion, the work at the WSBA in this area misses the mark on implicit bias as to ageism. During my research, I could find only two CLE programs focused on age and implicit bias.<sup>11</sup> That focus leaves a substantial gap. The WSBA can and should do better.

The concept of “ageism” has been around for quite a while.<sup>12</sup> Yet it is an overlooked form of discrimination that impacts not only older people but younger people as well.<sup>13</sup> There are different forms of ageism, but the one I focus on here involves ageism in the workplace.

The World Health Organization (WHO) has recognized the negative impact of ageism and states the problem this way:

[A]geism is prevalent, ubiquitous and insidious because it goes largely unrecognized and unchallenged. Ageism has serious and far-reaching consequences for people’s health, well-being and human rights and costs society billions of dollars. Among older people, ageism is associated with poorer physical and mental health, increased social isolation and loneliness, greater financial insecurity and decreased quality of life and premature death. *Ageism, in younger people has been less well explored in the literature but reported by younger people in a range of areas including employment, health and housing.* Across the life course,

ageism interacts with ableism, sexism and racism compounding disadvantage. (Emphasis added.)<sup>14</sup>

The WHO report emphasizes that ageism exists, from the institutional level down to the personal level. It can impact both the young and the old in the workplace, for example, with “practices” that limit opportunities given to both older and younger people to contribute to decision-making in the workplace; and by the use of “patronizing behavior” applied in interactions with older and younger people.<sup>15</sup>

I’m hopeful that the WSBA will recognize the need to explore ways to combat ageism, both explicit and implicit, and develop programs to combat this under-recognized “ism” in its DEI programming. “Old” and “young” alike must be valued in the legal profession in a recognizable manner. This effort will enhance our profession exponentially. 

#### NOTES

1. Miller, J. “A Ringing Defense of Free Speech,” *The Wall Street Journal*, May 7-8, 2022, p.C14.
- 2-5. *Id.*
6. Handelsman, J. and Sakraney, N., Implicit Bias (White House Office of Science and Technology Policy) [https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/bias\\_9-14-15\\_final.pdf](https://obamawhitehouse.archives.gov/sites/default/files/microsites/ostp/bias_9-14-15_final.pdf).
7. [www.wsba.org/about-wsba/equity-and-inclusion/diversity-cle-series](http://www.wsba.org/about-wsba/equity-and-inclusion/diversity-cle-series).
8. [www.wsba.org/about-wsba/washington-state-bar-foundation/equity-and-justice-resources](http://www.wsba.org/about-wsba/washington-state-bar-foundation/equity-and-justice-resources).
9. [www.wsba.org/about-wsba/equity-and-inclusion/diversity-programming-overview](http://www.wsba.org/about-wsba/equity-and-inclusion/diversity-programming-overview).
10. [www.wsba.org/docs/default-source/about-wsba/diversity/interrupting-and-mitigating-implicit-bias-handout-\(version-2\)926069f2f6d9654cb471fff0003f4f.pdf?sfvrsn=85b90cf1\\_0](http://www.wsba.org/docs/default-source/about-wsba/diversity/interrupting-and-mitigating-implicit-bias-handout-(version-2)926069f2f6d9654cb471fff0003f4f.pdf?sfvrsn=85b90cf1_0).
11. There may be other WSBA CLE materials on ageism but I could not find them during my research.
12. For a comprehensive review see North, M. and Fiske, S. “An Inconvenienced Youth? Ageism and its Potential Intergenerational Roots” (2012) [www.ncbi.nlm.nih.gov/pmc/articles/PMC3838706/](http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3838706/).
13. *Id.* And see, Bratt, C., Abrams, D., and Swift, H., “Supporting the Old but Neglecting the Young? The Two Faces of Ageism,” *Developmental Psychology* (2020) Vol. 56, No. 5, 1029-1039.
14. See “Global Report on Ageism,” World Health Organization (2021).
15. *Id.*

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# A Positive Reforecast and Looking Ahead

First, I hope that everyone is starting to enjoy life in a way that somewhat resembles what our lives used to be. My family just took a short trip to Portland, and it was wonderful to stay at a hotel without having to wear a mask. Hopefully, you and your families are also enjoying similar experiences.

It's a busy time of year, at least in terms of WSBA budgeting. We have just wrapped up our reforecast for the current fiscal year while launching into planning for the next. I have good news to report on both efforts.

## CURRENT AND FUTURE BUDGETS

The "reforecast" is what we do mid-fiscal year to compare budgeted revenues and expenditures in each cost center with actual revenues and expenditures for the fiscal year. The reforecast shows us how accurate we were as to our original budgeting, while also accounting for expenses and revenues that were not expected at the time the annual budget was finished for FY 2022.

The reforecast shows a positive variance of \$324,716. At a high level, this positive variance is due to the fact that we are forecasting that our revenue at the end of the year will be \$94,623 more than originally budgeted and our expenses will be \$230,093 less than originally budgeted. This reforecast includes a project that is forecasted to cost \$75,000, to reduce, consolidate, and remodel existing WSBA office space to accommodate the significantly reduced number of staff who continue to work in the office. It also includes an estimated \$3,300 expense to list for sublease part of the WSBA office space that is no longer needed in light of the number of staff who will continue to work remotely either full or part time. Given the fact that our annual budget is almost \$25 million, a positive variance of \$324,716 shows that our original budget was very accurate, at least to the midpoint of our fiscal year.

The positive variance in the General Fund is the result of purposeful and vigilant shifts in expenditures as we have navigated many unknowns during the pandemic. This positive variance should be credited to the Board of Governors and WSBA staff working hard together to be fiscally responsible for our members.

Of course, budgeting never stops! Just as we completed the reforecast, we launched into the heavy work of building the WSBA's FY 2023 budget. The Board has already set steady license fees (no increases) for all license types, and we are in good financial stead to maintain and carefully grow operations while keeping reserve funds in a prudent range. Looking ahead, however, one of the Budget and Audit Committee's challenges will be to prioritize and fund long-range goals and robust member services/

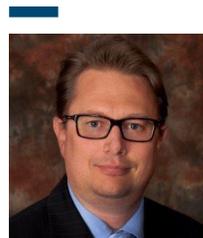
benefits, all while trying to keep attorney member license fees from increasing.

## NUTS & BOLTS: FINANCES AS OF MARCH 1

We have closed the books through February (five months into the fiscal year) with a net increase to the unrestricted General Fund of **\$1,383,823**. This positive variance is primarily driven by higher-than-anticipated license fees, Pro Hac Vice application fees, and MCLE fees. Part of this positive variance is also due to the timing of those payments, which cannot be expected to continue through the end of this fiscal year. It should be noted that revenues are currently well ahead of expenditures for the fiscal year. This is consistent with the WSBA's typical budget cycle. We are always revenue-heavy the first half (license season) and expense-heavy the second half (when many service contracts and expenses come due) of each fiscal year. That is an expected pattern; we expect to see expenses outpace revenue in the final months of the fiscal year. At this time, we forecast a positive variance of \$250,000 by the end of this fiscal year.

If you would like more information about the meeting times and materials for the WSBA Budget and Audit Committee, please visit [www.wsba.org/connect-serve/committees-boards-other-groups/budget-audit](http://www.wsba.org/connect-serve/committees-boards-other-groups/budget-audit). In addition, you can find the WSBA's annual report and the monthly financial information at [www.wsba.org/connect-serve/committees-boards-other-groups/budget-audit](http://www.wsba.org/connect-serve/committees-boards-other-groups/budget-audit).

Overall, I am proud of what we have accomplished, and what we are projected to accomplish, this fiscal year. As I write this, we are expecting to finish the year with revenues and expenses close to neutral, all while navigating a pandemic, still finding ways to expand member services, and without any increase in lawyer license fees. It's my hope that as the year progresses we will do better than expected and beat our reforecast in terms of reserve spending. My goal is for the WSBA to have another year of net increases to the unrestricted General Fund. I would like to thank the Budget and Audit Committee members, WSBA staff, and various stakeholders for their hard work and input. **BN**



**Bryn A. Peterson**

*WSBA Treasurer*

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# Done Deal: Settlement Ethics

BY MARK J. FUCILE

Most cases settle.<sup>1</sup> Although that's been true for a long time, the dynamics of settlement have changed significantly over the past generation. Today, settlement negotiations are often "organized" through court-annexed or private mediation. Many courts, for example, either encourage or require alternative dispute resolution before a case proceeds to trial.<sup>2</sup> Although negotiation of single cases remains the norm in many practice settings, mediating multiple cases at the same time has become increasingly common in areas such as mass torts and employment discrimination.<sup>3</sup>

In this column, we'll look at three facets of settlement ethics. First, we'll discuss the sometimes not-so-bright line between opinions and material misrepresentation during negotiations. Second, we'll examine whether a litigation opponent can be prevented from handling future cases against a defendant as part of a current settlement. Third, we'll survey conflicts that can arise when handling

settlements involving multiple clients.

Before we do, three qualifiers are in order. First, although we will focus on settlements in the litigation context, many of the principles we will discuss apply with equal measure to negotiations beyond litigation. Second, we will focus primarily on civil rather than criminal cases.<sup>4</sup> Third, the topics selected are recurring themes but are not intended to be an exhaustive list. For example, if a lawyer discovers during settlement negotiations that a client is committing fraud, that raises sensitive issues of potential disclosure and withdrawal.<sup>5</sup>

## OPINION VERSUS MISREPRESENTATION

RPC 4.1 sets the standard for dealings with opposing parties during negotiations:

In the course of representing a client a lawyer shall not knowingly:

- (a) make a false statement of material fact or law to a third

- person; or
- (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.<sup>6</sup>

It is important to note three points that are *not* required under this rule.

First, there is no affirmative obligation to disclose weaknesses in your client's case to the other side. Under RPC 3.4(a), a lawyer cannot unlawfully obstruct another party's access to evidence. But, there is generally no duty to help opponents analyze evidence they have in front of them. ABA Formal Ethics Opinion 94-387 (at 1-2) (1994) put it this way in discussing whether disclosure of the possible expiration of a statute of limitation was required:

As a general matter, the Model Rules of Professional Conduct ... do not require a lawyer to disclose weaknesses in her client's case to an opposing party, in the context of settlement negotiations or otherwise. Indeed, the lawyer who volunteers such information without her client's consent would likely be violating her ethical obligation to represent her client diligently, and possibly her obligation to keep client confidences.

Second, there is also no affirmative obligation to disclose settlement strategy to an opposing party. The Washington Supreme Court, in *In re Carmick*, 146 Wn.2d 582, 599,

48 P.3d 311 (2002), noted in this regard that “under generally accepted conventions in negotiations ‘a party’s intentions as to an acceptable settlement of a claim’ are not taken as statements of material fact.”<sup>7</sup>

Third, hard bargaining that includes expressions of opinion is not prohibited either. Comment 2 to RPC 4.1 attempts to delineate the sometimes imperfect line between opinions and misstatements:

This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party’s intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

What is prohibited are outright misrepresentations of material facts, through either knowing misstatements or nondisclosure. “Knowingly” is defined under RPC 1.0A(f) as “actual knowledge of the fact in question[.]” *In re Sumner*, 105 P.3d 848 (Or. 2005), for example, involved a lawyer who was convicted of fraud in Idaho for knowingly misrepresenting the material facts of a client’s multiple auto accidents in separate negotiations with an insurer and a corporate defendant. ABA Formal Opinion 06-439 (2006) notes the prohibition also includes “implicit misrepresentations created by a lawyer’s failure to make truthful statements[.]” ABA Formal Ethics Opinion 95-397 (1995) offers a very real example of the latter that can occur when negotiating resolution of mass torts or other serious personal injury claims: The claimant dies. Setting aside the substantive legal issue of whether the lawyer as an agent still has a principal when that occurs,<sup>8</sup> failing to disclose a client’s death in the serious personal injury context would almost always

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be regarded as material due to its impact on settlement valuation (one way or the other depending on the circumstances).

Material misrepresentations in this context can also have significant repercussions beyond potential regulatory discipline. Rescission of any resulting agreement is not hard to imagine.<sup>9</sup> Although comparatively rare, law firms have been sued along with their clients for asserted fraud when conducting settlement negotiations.<sup>10</sup> If the settlement is challenged, it is also not hard to imagine that the lawyer may be disqualified as a necessary witness under the “lawyer-witness” rule, RPC 3.7.

### RESTRICTIONS ON FUTURE REPRESENTATION

RPC 5.6(b) states the black-letter rule that a lawyer can neither offer nor accept a direct restriction on a lawyer’s right to handle future adverse claims as a condition of the settlement of a current case:

- A lawyer shall not participate in offering or making:
  - ... .
  - (b) an agreement in which a restriction on the lawyer’s right to practice is part of the settlement of a client controversy.<sup>11</sup>

**There is no affirmative obligation to disclose weaknesses in your client’s case to the other side.**

Black can fade to gray, however, when the restriction is indirect.

*In re Brandt/Griffin*, 10 P.3d 906 (Or. 2000), *Florida Bar v. St. Louis*, 967 So. 2d 108 (Fla. 2007), and *Florida Bar v. Rodriguez*, 959 So. 2d 150 (Fla. 2007), for example, all involved claimants’ lawyers disciplined for violating versions of RPC 5.6(b) by accepting offers of *future* retention by party opponents that “conflicted them out” of adverse claims while negotiating mass tort settlements. WSBA Advisory Opinion 1850 (1999) reaches the same conclusion under our rule.

Along the same lines, the ABA in Formal Ethics Opinion 93-371 (1993) concluded that a global settlement of mass tort litigation with a law firm’s clients that created a predetermined settlement rate for future claims while prohibiting the law firm from representing clients who “opted out” violated ABA Model Rule 5.6(b) (on which the corresponding Washington rule is patterned). Similarly, the ABA in Formal Opinion 00-417 (2000) found that a settlement agreement that prevented a claimant’s counsel from using the information learned during the case being settled in any future case violated Model Rule 5.6(b).<sup>12</sup> WSBA Advisory Opinion 988 (1986), in turn, concluded that a time limitation would not exempt an agreement from the rule.

By contrast, statements in settlement agreements that plaintiffs’ counsel “have no present intention” of representing claimants against the settling defendant in the future have withstood challenge in other jurisdictions under the circuitous logic that—assuming the statements are true—they don’t actually create a legally binding promise.<sup>13</sup>

From the defense side, RPC 5.6(b) is not just a “problem” for claimants’ counsel. The rule is framed to prohibit *offering* such restrictions as well as accepting them. In *Adams v. BellSouth Telecommunications, Inc.*, 2001 WL 34032759 (S.D. Fla. Jan. 29, 2001) (unpublished), for example, the defense lawyers were sanctioned for offering a “consulting” arrangement to claimants’ counsel reminiscent of those just noted. Similarly, WSBA Advisory Opinion 2125 (2006) observed “that neither plaintiff nor defendant should enter into such a settlement agreement[.]”

Provisions violating RPC 5.6(b) could also

CONTINUED >

put a settlement itself—or at least the restriction—at risk of being held unenforceable on public policy grounds. The Washington Supreme Court in *LK Operating, LLC v. Collection Group, LLC*, 181 Wn.2d 48, 85, 331 P.3d 1147 (2014), noted generally that “[c]ontracts formed in violation of the RPCs are unenforceable to the extent that they contravene public policy.” The corresponding ABA Model Rule, in turn, has been explained on public policy grounds to preserve client choice in the selection of legal counsel.<sup>14</sup>

### CONFLICTS

Conflicts can develop in many ways during settlement negotiations. In this column we’ll look at two: “aggregate” settlements under RPC 1.8(g); and “limited fund” settlements under RPC 1.7(a)(1). These are not necessarily the most common conflicts, but, when they occur, they are among the most difficult to navigate. Both can occur when a lawyer or law firm is negotiating claims for multiple clients against a single defendant or a related set of defendants.

**Aggregate Settlements.** In many respects, the most difficult practical question for plaintiffs’ counsel is whether a defendant’s proposal triggers the aggregate settlement rule, RPC 1.8(g).<sup>15</sup> Neither the Washington rule nor its ABA Model Rule counterpart defines what constitutes an “aggregate” settlement. Washington court decisions and ethics opinions have touched on RPC 1.8(g), but have not provided a comprehensive definition either.<sup>16</sup>

The ABA, the American Law Institute, courts nationally, and much scholarly work have wrestled with a practical definition.<sup>17</sup> For the most part, these authorities agree that simply settling multiple cases at the same time on their own merits—even if they involve some common facts—does not constitute an aggregate settlement.<sup>18</sup> These authorities also generally agree that an “all or nothing” proposal framed along the lines of “my client will pay ‘x’ dollars to resolve all of these cases but the offer is contingent on all of your clients agreeing” constitutes an aggregate settlement.<sup>19</sup> The analytical dividing line is that the first scenario does not pose a conflict while the second does because the offer has made resolution of the cases interdependent.<sup>20</sup> Because considerable uncertainty remains over the definition, plaintiffs’

counsel should closely assess whether a settlement proposal makes resolution of one jointly represented client’s case dependent in some way on the other clients’ cases.

RPC 1.8(g) does not prohibit “aggregate” settlements. Rather, if the rule is triggered, it requires extensive disclosure to all of the clients involved of the facts of each client’s claims and their respective share in the overall settlement. ABA Formal Opinion 06-438 (2006) contains a thorough discussion of the items that should be disclosed if the rule applies. Each client must give their informed consent and their consent must be confirmed in writing.<sup>21</sup>

**“Limited Fund” Settlements.** If the assets available for a potential settlement are insufficient to satisfy each jointly represented client’s claim, the lawyer would have a multiple client conflict under RPC 1.7(a)(1) in attempting to negotiate between the clients. If not addressed, the conflict would be non-waivable because it arises in the same matter and, in the phraseology of Comment 29 to RPC 1.7, would “ordinarily” require the lawyer to withdraw.

The Court of Appeals in *Matter of Lauderdale’s Guardianship*, 15 Wn. App. 321, 325, 549 P.2d 42 (1976), suggested a practical solution to this otherwise intractable problem. In *Lauderdale*, a lawyer represented two claimants to a limited settlement fund. The Court of Appeals recognized that there is no conflict when the lawyer simply assembles the largest possible fund for jointly represented clients. Rather, the conflict arises when jointly represented clients are then forced to compete over the division of a limited fund. The Court of Appeals in *Lauderdale* suggested that, once the original lawyer assembles the largest

possible fund, the competing clients should then be represented by separate counsel in the division of that fund. The logic underpinning *Lauderdale* suggests that the clients could also decide on their own how the fund should be divided. Although *Lauderdale* preceded the adoption of RPC 1.2(c), the Court of Appeals effectively recognized that the original lawyer can limit the scope of the representation to avoid the otherwise disqualifying conflict. **BN**

### NOTES

1. See Jeffrey Q. Smith & Grant R. MacQueen, “Going, Going, But Not Quite Gone,” Vol. 101, No. 4 *Judicature* 26, 28 (2017) (discussing resolution short of trial generally); Theodore Eisenberg & Charlotte Lanvers, “What Is the Settlement Rate and Why Should We Care?” 6 *J. Empir. Leg. Studies* 111 (2009) (surveying settlement data across practice areas).
2. See, e.g., Western District of Washington LCR 39.1 (alternative dispute resolution); King County Superior Court LCR 16(b) (same).
3. See, e.g., Kenneth R. Feinberg, “Reporting from the Front Line—One Mediator’s Experience with Mass Torts,” 31 *Loy. L.A. L. Rev.* 359 (1998); Susan K. Hippensteele, “Revisiting the Promise of Mediation for Employment Discrimination Claims,” 9 *Pepp. Disp. Resol. L.J.* 2 (2009).
4. For thoughtful discussions of the ethics issues in the context of criminal plea negotiations, see Erica J. Hashimoto, “Toward Ethical Plea Bargaining,” 30 *Cardozo L. Rev.* 949 (2008), and Fred C. Zacharias, “Justice in Plea Bargaining,” 39 *Wm. & Mary L. Rev.* 1121 (1998).
5. See generally RPCs 1.6 (confidentiality) and 1.16 (withdrawal). See also ABA Formal Op. 92-366 (1992) (surveying confidentiality and withdrawal when lawyer discovers client fraud); Dewar v. Smith, 185 Wn. App. 544, 563, 342 P.3d 328 (2015) (discussing “noisy withdrawal”—where a lawyer disavows representations made on behalf of a client); WSBA Advisory Op. 201701 (2017) (addressing confidential information when seeking court permission to withdraw).
6. See also RPC 8.4(c) (broadly prohibiting “conduct involving dishonesty, fraud, deceit or misrepresentation”).
7. Quoting Comment 1 to ABA Model Rule 4.1 (on which Washington’s corresponding rule is patterned).
8. See RCW 2.44.010-.020 (authority of attorney); see also ABA Formal Op. 95-397(1995) at 4 (“The death of a client means that the lawyer, at least for the moment, no longer has a client and, if she does thereafter continue in the matter, it will be on behalf of a different client [*i.e.*, a personal representative of an estate].”)
9. See generally *Hawkins v. Empres Healthcare Management, LLC*, 193 Wn. App. 84, 371 P.3d 84 (2016) (discussing rescission of a

The ABA, the American Law Institute, courts nationally, and much scholarly work have wrestled with a practical definition of what an ‘aggregate’ settlement is.

settlement agreement for asserted fraud in the inducement).

10. See, e.g., *Matsuura v. Alston & Bird*, 166 F.3d 1006 (9th Cir. 1999). These kinds of cases do not typically seek direct enforcement of RPC 4.1. See *Kwiatkowski v. Drews*, 142 Wn. App. 463, 482, 176 P.3d 510 (2008) (rejecting rescission predicated on RPC 4.1 alone). Rather, as in *Matsuura*, the claim is typically predicated on common law fraud.
11. Comment 3 to Washington RPC 5.6 notes that the prohibition in RPC 5.6(b) does not extend to restrictions in a lawyer's plea agreement in a criminal case or a disciplinary stipulation.
12. WSBA Advisory Opinion 1067 (1987) discusses the potential interplay between confidentiality provisions governing witness testimony and RPC 5.6(b).
13. See, e.g., *Desantis v. Snap-On Tools, Co.*, 2006 WL 3068584 at \*12 (D.N.J. Oct. 27, 2006) (unpublished); see also *La. Mun. Police Emps' Ret. Sys. v. Black*, 2016 WL 790898 at \*5 n.37 (Del. Ch. Feb. 19, 2016) (citing *Desantis* approvingly); see generally Lynn A. Baker, "Mass Torts and the Pursuit of Ethical Finality," 85 *Fordham L. Rev.* 1943, 1959-60 (2017) (discussing the illusory nature of "no present intention" agreements).
14. See ABA Formal Op. 93-371(1993) at 3. For an extended critique of ABA Model Rule 5.6(b)'s public policy rationale, see Stephen Gillers and Richard W. Painter, "Free the Lawyers: A Proposal to Permit No-Sue Promises in Settlement Agreements," 18 *Georgetown J. Legal Ethics* 291 (2005).
15. Under Comment 13 to RPC 1.8, class actions are governed by the notification and approval procedures in applicable court rules and case management orders.
16. See, e.g., *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 310, 45 P.3d 1068 (2002) (noting the rule, but not defining "aggregate"); *Sullivan v. City of Marysville*, 2014 WL 2896003 at \*6 n.3 (W.D. Wash. June 26, 2014) (unpublished) (same); WSBA Advisory Op. 202001 (2020) at 4 (same).
17. See ABA Formal Op. 06-438 (2006); ALI, *Principles of Aggregate Litigation* § 3.16 (2010); *In re Gatti*, 333 P.3d 994 (Or. 2014); Peter R. Jarvis and Trisha M. Rich, "Defining Aggregate Settlements: The Road Not to Take," 23 *Prof. Law.* 45 (2016).
18. See authorities cited in note 17, *supra*.
19. See authorities cited in note 17, *supra*.
20. See Geoffrey C. Hazard, Jr., W. William Hodes & Peter R. Jarvis, *The Law of Lawyering* at 13-8 (rev. 4th ed. 2020) (noting that ABA Model Rule 1.8 generally and ABA Model Rule 1.8(g) in particular are specific applications of "material limitation" conflicts articulated generally under ABA Model Rule 1.7(a)(2)).
21. See Washington RPCs 1.0A(e) (defining "informed consent"), 1.0A(b) (defining "confirmed in writing").



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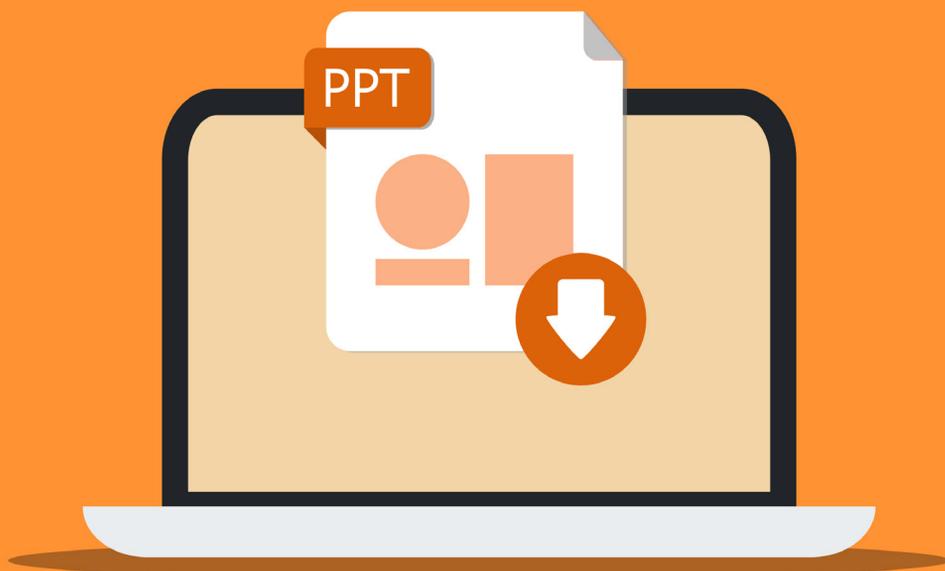


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# Say Goodbye to Bad Digital Presentations

BY DAVID J.S. ZIFF

As a lawyer, you undoubtedly do a lot of writing, from motions to contracts to mediation letters. And you communicate your legal analysis in other ways: anything from oral arguments to client meetings. For each mode of communication, you've likely developed a strategy and method of preparation. You don't just show up to the Court of Appeals and wing it.

But you might not be giving proper attention to one common type of communication: digital presentations. Slide decks, PowerPoints, or whatever else you might call them, are inescapable in modern legal practice. Whether your audience is a jury, an adjudicator, a client, or other attorneys, chances are you've spent some time creat-

ing digital presentations.

Unfortunately, these presentations often don't receive the same lawyerly attention as the more "traditional" forms of legal communication. Moreover, responsibility for digital presentations might be farmed out to paralegals or vendors, with little direct involvement from the attorneys supervising a project.

David J.S. Ziff is an associate teaching professor at the University of Washington School of Law. You can follow him on Twitter at @djsziff.



That's a mistake. Digital presentations are a form of legal communication. And though lawyers should certainly seek help from paralegals or other specialists, we should not abrogate our responsibility to create a presentation that best serves our client's needs. You don't subcontract out your motion practice; neither should you take a hands-off approach to your digital presentations.

Easier said than done, of course. Even if you want to be more lawyerly about your digital presentations, you might not know how. You've learned to write briefs, draft contracts, and present oral arguments. You have expertise and experience in those settings. But slide decks? Not so much.

Or perhaps you avoid digital presentations altogether. I can't blame you. Bad digital presentations are quite bad. They somehow manage to be both boring and distracting. But that's no reason to eschew digital presentations entirely. After all, you wouldn't give up on The Beatles because you heard a fourth grader play *I Want to Hold Your Hand* on a trumpet.

Fortunately, we can do better. Jonah Perlin, a professor at the Georgetown University Law Center, has written an article to save us from ineffective digital presentations.<sup>1</sup> In researching the article, Professor Perlin collected information from design experts, surveyed the academic literature on visual rhetoric, and borrowed from the fields of marketing and cognitive science. He did the legwork, so you don't have to.

And unlike many law review articles, Professor Perlin's article is written with practicing lawyers in mind. He understands that you don't need (or want) a theory of slide design or ruminations on the nature of communication. You're a lawyer, not an academic. In the words of Elaine Benes: "Give me something I can use!"

The article delivers. Professor Perlin provides a practical workflow: six steps you can use, right now, to create effective digital presentations. His advice is pragmatic, includes visual examples, and should be read by everyone in your firm. Seriously. You can stop reading this right now and download the whole article.<sup>2</sup>

You're still here?

Well, if you want more information before downloading, like a tasty sample from the Costco grocery aisle, here's my summary of Professor Perlin's "efficient, effective,



## ASK US

*If you have a question about legal writing that you'd like to see addressed in a future "Write to Counsel" column by UW Law writing faculty, please submit it to wabarnews@wsba.org, with the subject line "Write to Counsel."*

research-based, and battle-tested" workflow for digital presentations. The process has six steps, each of which Professor Perlin explains and expands upon:

1. Consider the **purpose and audience** of the presentation.
2. Create the substantive **content** for the presentation.
3. Rely on Step 1 and Step 2 to create a **storyboard** based on your understanding of different slide types.
4. Ensure a consistent **brand** for your presentation.
5. Use your program of choice to **create the slides** using your brand and based on the storyboard.
6. **Edit, edit, edit**, just like you would any other piece of work product.

Sounds simple enough. But as with all modes of legal communication, the devil is in the details. And the details of digital presentations are different from what you might employ when drafting a motion or presenting an argument. Professor Perlin's article therefore provides guidance for each step.

### 1 Consider the Purpose and Audience.

This is familiar advice. But few appreciate that purposes and audiences are more complicated for digital presentations. A motion, for example, has a clear audience and a clear purpose: The audience is the judge (and perhaps her clerks). The purpose is to get the judge to rule in your favor.

Digital presentations, however, are more versatile. A presentation might be projected during a speech or distributed in print. It might be viewed at a specific time, referenced afterward, or both. Your process should therefore start with a clear understanding of the various "hows," "whos," and "whys" of the presentation.

### 2 Create the Substantive Content.

This step shouldn't be new. Unfortunately, the flashiness of digital presentations can cause lawyers to skip the rigor they'd devote to a traditional written product. But no matter the medium, your underlying analysis must be precise and robust. Sure, a digital presentation won't contain footnotes and case citations. It must still be reliable.

### 3 Create a Storyboard.

Lawyers know that outlining is an important part of writing. Storyboarding is, essentially, outlining for the digital presentation. But storyboarding requires an extra layer of difficulty, since the digital presentation operates in multiple dimensions. By contrast, the outline of a brief need only include a structure and an order. That's it. The outline is simple because each entry contains the same type of content: a block of text.

Digital presentations add a level of complexity. You still need to structure and order the content. But you must also decide *how to display* the content. The power of a digital presentation is that it can display various media: text, pictures, videos, charts, almost anything you want.<sup>3</sup> That added flexibility requires added decision-making. A storyboard includes the "what" and the "where," and then it adds the "how."

As lawyers, we're comfortable turning our ideas into words. For traditional writing projects, we know the tools in our toolbox, and we know how to use them. But digital presentations require a different toolbox—a more creative and (perhaps) daunting toolbox. Fortunately, Professor Perlin walks you through the tools at your disposal. He explains how, when, and why to use those tools.

**Digital presentations require a different toolbox—a more creative and (perhaps) daunting toolbox.**

In a digital presentation, your tools are the various types of slides you might use for different aspects of your presentation. I can't do justice to Professor Perlin's entire explanation (just read the whole thing!), but here's a quick summary of his guidance:

- First, "guide slides" include things like titles, agendas, and headings for different parts of a presentation. And don't forget background slides! These are the slides displayed when you want the audience to focus on the speaker.
- Second, "documentary slides" display extrinsic information like photos, maps, charts, video clips, and quotes.
- Third, "content slides" reflect lawyer-created content: bullet points, text, or other sorts of independent analysis.

With an understanding of how and when to use these slide types, you can storyboard an effective digital presentation.

### 4 Develop a Consistent Brand.

Any mention of "branding" might make you run and hide. Don't be scared. In this context, "branding" isn't about marketing or snazzy logos. Instead, your presentation "brand" is its cohesive set of design elements. This brand is not a one-size-fits-all style for your firm's presentations. Rather, your branding decisions should reflect the specific audiences and purposes of the presentation. Basically, this advice is "Pick one font and stick to it," expanded for the myriad style decisions in a digital presentation.

### 5 Create the Slides.

At this point, the presentation will almost (almost!) create itself. You have your brand. You have your storyboard. Just use your brand template to create individual slides from the storyboard.

Of course, you might run into some obstacles along the way. Don't worry, Professor Perlin has you covered. For example, you might discover that one slide, once created, looks too cluttered. What to do? The article includes a helpful tip: the rule of six. A person can normally see and comprehend six objects at once. If you come across

CONTINUED >



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## Write to Counsel

CONTINUED >

a slide with more than six things—images, bullet points, titles, etc.—consider breaking it up. The article contains many more similarly easy-to-implement tips.

**6 Edit, Edit, Edit.** You would never file a brief without reading and editing it, start to finish, at least a couple times. So why would you treat a digital presentation any differently? Of course, reviewing and revising a digital presentation is a more complicated process. You can't just read the thing. Your review process should mirror the process by which the intended audience will actually receive the presentation. That means, yes, you should read and edit the slides. But you should also deliver the slides in whatever manner they will eventually be delivered. Your review should encompass not only the slides themselves, but the entire presentation, including the slides, additional documents, concurrent speeches, a projection, and any other attributes of the final product.

Whether you're a skeptic or devotee of digital presentations, Professor Perlin's article is sure to improve your practice. Because once you understand how to develop effective presentations, you'll start discovering new ways to deploy this new power. And your improved communication will undoubtedly lead to improved persuasion, understanding, and collaboration across a wide range of projects. **BN**

### NOTES

1. Jonah Perlin, "Making Your (Power) Point: An Introductory Guide to Digital Presentation Design for Lawyers," 18 Legal Comm. & Rhetoric: JALWD 81 (2021).
2. The link is right here: <https://alwd.org/lcr-archives/fall-2021-volume-18/620-making-your-power-point-an-introductory-guide-to-digital-presentation-design-for-lawyers>.
3. If you don't already incorporate pictures or other graphical media into your traditional written documents, you should consider doing so. To inspire your thinking about using images, I recommend reading Steve Johansen & Ruth Anne Robbins, "Art-iculating the Analysis: Systemizing the Decision to Use Visuals as Legal Reasoning," 20 J. Legal Writing Inst. 57 (2015), available at <https://www.lwionline.org/sites/default/files/2020-05/Johansen%20Robbins%20Articulating%20the%20Analysis.pdf>; and my colleague Elizabeth Porter, "Taking Images Seriously," 114 Colum. L. Rev. 1687 (2014), available at <https://columbia-lawreview.org/wp-content/uploads/2016/04/Porter.pdf>.



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# LGBT Law Section

A Q&A with current section chair **Peder T. Punsalan-Teigen**

**Q. What is the most valuable benefit members get from joining your Section that they can't get anywhere else?**

There are many benefits for Section members; however, arguably the most valuable is the opportunity to receive periodic updates about changes to various areas of the law that may have important impacts on LGBTQ+ clients, litigants, or community members broadly. Related to this, Section members also are entitled to discounted rates on CLEs, which the Section holds throughout each calendar year, and which expand on various law changes and other relevant updates.

**Q. What is a recent Section accomplishment or current project that you are excited about?**

Most recently, our Section hosted our year-end CLE: 2021 Hot Topics in LGBTQ+ Law. The CLE had just

over 25 attendees, and the presentations covered law changes in areas including statutory and case law banning conversion therapy, minor guardianship statutes, domestic violence protection statutes, and public accommodations law.

**Q. What opportunities does your Section provide for members who are looking for a mentor or for somebody to mentor?**

We are currently working on developing a formal

networking program within the Section, but we also work to refer members to formal networking opportunities with other community organizations, such as QLaw Association of Washington. Further, through discussions at meetings and social events, Section membership offers informal networking opportunities as well.

**Q. What advice do you have for building a successful practice in the area of law related to your Section and**

**Peder T. Punsalan-Teigen** is the current chair of the LGBT Law Section. Punsalan-Teigen is an associate at Skellenger Bender, P.S. in Seattle; his practice focuses on various aspects of family law, including LGBTQ-specific issues. He earned his J.D. *magna cum laude* from Seattle University School of Law. He is a member of the American Bar Association, Washington State Bar Association, King County Bar Association, Family Law Institute, National LGBT Bar Association, QLaw (LGBT Bar Association of Washington), Filipino Lawyers of Washington, and William L. Dwyer American Inn of Court. In addition to his volunteer service with the LGBT Law Section and in other bar association activities, Punsalan-Teigen has served as a co-chair of QLaw's Judicial Evaluations Committee since 2019.



LEARN MORE >

The Section membership year is Jan. 1 - Dec. 31. For more information and to join the LGBT Law Section, or any other Section, visit [www.wsba.org/legal-community/sections/sections](http://www.wsba.org/legal-community/sections/sections).

**how does membership in your Section help do that?**

The laws that impact LGBTQ+ clients and litigants are extremely diverse and wide ranging. It is therefore important to continue to develop community-specific legal skills and knowledge, not only within one's own practice area(s), but in various other practice areas. So as to ensure ongoing cultural competency within the broader community, it is also important to maintain and stay up to date with changing attitudes and relevant information.

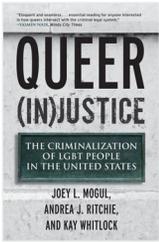
Section membership promotes these practice skills directly by ensuring timely notice about updates to various practice areas, as well as access to substantive updates and reflections on the importance of different updates/changes. Further, Section members have the opportunity to communicate with, collaborate with, and learn from other Section members who may represent different segments of the community, as well as different practice areas.

**Q. In addition to membership in your Section, what are the best ways to stay up on the developing law in this practice area?**

Internet searches focusing on area-specific law changes/updates, as well as following relevant cases through the different courts and/or utilizing court trackers. 

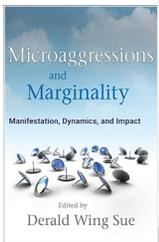
SIDEBAR

Titles Available From the Lending Library Related to LGBT Law and Other Topics



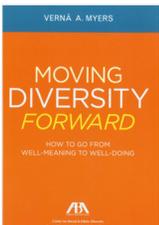
**Queer (In)Justice: The Criminalization of LGBT People in the United States**

By Joey L. Mogul, Andrea J. Ritchie, and Kay Whitlock



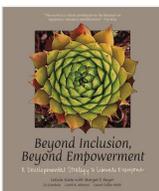
**Microaggressions and Marginality: Manifestation, Dynamics, and Impact**

Edited by Derald Wing Sue



**Moving Diversity Forward: How to Go From Well-Meaning to Well-Doing**

By Verna A. Myers



**Beyond Inclusion, Beyond Empowerment: A Developmental Strategy to Liberate Everyone**

By Leticia Nieto

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**MORE ONLINE >** June is traditionally celebrated as LGBTQ+ Pride Month, in honor of the 1969 Stonewall Uprising in New York City. For more information, find your local Pride organization, or visit <https://lgbtq.wa.gov/>.

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WINTER 2022

# Lawyer Bar Exam Pass List

Of the 243 candidates who took the February 2022 Lawyer Bar Exam, 124 passed. Congratulations! The full pass list is printed below.

## A

Adachi, Allison Jun Xiao  
Audish, Matthew Badie

## B

Barzey, Nasheba  
Bramble, Kayla Marie  
Brannon, Todd  
Bretz, Mackenzie Owen  
Brevig, Cory  
Brodie, Elizabeth Anne Ellen  
Brookwell, Ian Lee  
Budnich, Madison  
Bunger, Christopher Danger

## C

Candia, Joshua A.  
Chandrasegar, Jeechan  
Cheney, Megan Elizabeth  
Choudhry, Zyreena Gutierrez  
Clemons, Molly Homan  
Clinton, James Alfred  
Conklin, Jeremy Henry  
Croskrey, Jonathan  
Cross, Jacqueline Janet  
Cuber, Ashley Briana  
Curvey, Lesa M.

## D

Dao, Stacy Huong  
Deiparine, James Kevin  
Dempsey, Kristen Elise  
Derenski, Heather Noelle  
Dodson, Paul

## E

Egwuatu, Christopher Emeka  
Elysee, Janelle

## F

Fekade, Goitome Tekle  
Fitzpatrick, Simon

## G

George, Timothy Michael  
Gill, Karanjot  
Gonzales, Joshua Francis Morante  
Greentree, Trevor Martin  
Gregorski, Alexandra

## H

Hakimi, Najibullah  
Harris, Alissa Nicole  
Haveliwala, Khadija  
Hernandez, Abi Ismari  
Hightower, Christopher James  
Hill-Pennington, Crystal Danielle  
Holliday, Claudine  
Holman, Erica Ruth

## J

Jacobs, Richard Alexander  
Jewell, Shinta Mayadewi  
Jones, Brittany F.

## K

Kang, Jing  
Kim, Hyengyeal  
Kim, Irang  
Kim, Seowoo  
King, Nathan Alexander  
Krakow, Alexandra Lang  
Kulberg, Ashely Carolina

## L

Li, Shuyi  
Li, Zhenyuan  
Lindburg, Alyssa Marie  
Lockheart, Seth Namandi

## M

Maki, Matthew Thomas  
Manesh, Roxana  
Manzoor, Unsa  
Martin, Kyle Raymond  
McDonough, Luke  
McDowell, Molly  
Medina, Alexander  
Medler, Saybin  
Mills, Kailey Elise  
Modi, Ryan  
Monarrez, Alejandro  
Morales, Harold Ivan  
Moran, Kristen Brennan  
Mysak, Leanna Marie

## N

Naqvi, Zack  
Nichols, Craig Alan  
Nuismert, Tegan Christine  
Greenwald

## O

O Brien, Tyler  
Ortiz, Olivia Ann

## P

Pandolfo, Thomas  
Pardue, Benjamin  
Paukert, Alexander John  
Peck, Debra Linford  
Perkins, Andrew Cole  
Phongsraphang, Ammara  
Pia, Irena Yong Fei  
Polito, Jack F.

## R

Radecke, Stephanie  
Rea, Michael Carlton  
Reidy, Daniel Isaac  
Rusanova, Irina

## S

Sabella, Chelsea Paige  
Saitz, Rebecca Lynn  
Saraceno, Nicholas  
Satake, Toshiaki  
Savitch, Benjamin Andrew  
Schaefer, Carolyn  
Boehnen Schmidt, Kristine  
Schwich, Andrew Luther Breimeier  
Seboldt, Cody Thomas  
Shaw, Samantha Ann  
Shi, Hua  
Singarajah, Atharshna  
Smith, Jeremy Wesley  
Soon, Geraldine Meiyi  
Spence, Laura Gail  
Stevenson, Theodore James  
Struve, Samantha Nicole  
Surface, Holly Ann  
Sutherland, Janell Young

## T

Tsangeos, John Angelo  
Tzucker, Rebecca

## U

Uhrig, Levi J.F.

## V

Voigt, Shelsea Rose  
Voorheis, Savannah Briare

## W

Walsh, Christopher Michael  
Walsh, Kendall Loren  
Warburton, Graceanne Virginia  
Waterman, Drew Hall  
Watkins, Misti Ann  
Weiss, Angelica Woodroffe  
Wilson, Kelly  
Won, Min

## Y

Yee, Alexander Ching Fung

## Z

Zhuang, Ling  
Zimmerman, Noah D.

# Carl Maxey: Boxer, Lawyer, Civil Rights Champion

*A look back at the career of the legal giant, 25 years after his death*

BY MORGAN MAXEY

**C**arl Maxey, a champion for justice, a “type A Ghandi”<sup>1</sup> as he was called in a *New York Times* article, stood for those whose voices went unheard. Maxey was one of the most influential figures in the Inland Northwest, and one of the most well-known lawyers and civil rights advocates in the country when he died in 1997.

Maxey was born to a single mother in Tacoma in 1924. He was adopted by a couple from Spokane immediately following his birth, but landed in the Spokane Children’s Home after his adoptive father disappeared and his mother died. When Maxey was 12, the Children’s Home stopped caring for African American children and he was placed in the Spokane County Juvenile Detention Center.

After a few months, he was rescued from the Juvenile Detention Center by a Jesuit priest named Father Cornelius E. Byrne. Byrne offered him a place to live at the Sacred Heart Mission in De Smet, Idaho. Almost all of the students were from the Coeur d’Alene Tribe, and it was the first time Maxey had attended school



*The bronze bust of Carl Maxey on display at Gonzaga University was commissioned by Nancy and John Clute and completed by Dana Kelley of Spokane in 2001.*

in a place where white students were not the majority.

At this new home, Maxey began to thrive. He was studious, hardworking, and a very talented athlete. Father Byrne taught him the discipline of boxing. He arranged boxing matches for his students at logging and mining camps around the neighboring areas. Maxey won his first match at the age of 13; his opponent was 33. When Maxey



*Earlier this year, Gonzaga University's Center for Civil and Human Rights put out a call to local artists for submissions that honored Carl Maxey and his dedication to social justice. The review committee, in consultation with Maxey's family, chose this work of art, entitled "Unforgettable." The artwork was created by award-winning printmaking artist and Gonzaga Assistant Professor Reinaldo Gil Zambrano.*

left the mission school at age 15, Father Byrne arranged a full-ride scholarship for him to attend Gonzaga High School, Spokane's Catholic prep school, which was associated with Gonzaga University. Maxey quickly became the star of the high school's baseball, basketball, and football teams.

After graduating from Gonzaga High School in 1942, Maxey enlisted in the Army. He wanted to help in any way that he could, but still faced discrimination and poor treatment because of the color of his skin. From that point forward, Maxey dedicated himself to fighting for equality and civil rights for all.

Segregation was all the more prominent when he returned home to Spokane. He was denied service and told he couldn't frequent certain establishments. This only fueled his fire to put an end to segregation and to fight for equality. Maxey attended the University of Oregon for a short time and then returned

to Spokane in 1948 to attend Gonzaga University School of Law on a boxing scholarship. There, he gained the moniker, "King Carl," as he went undefeated in 32 bouts. Maxey went on to beat Michigan State's Chuck Spieser by one point in the finals of the NCAA championships. Maxey was dubbed the nation's collegiate light-heavyweight champion, which helped Gonzaga to win a share of the national team championship.<sup>2</sup> When Maxey and the rest of the boxers arrived home by plane the next day, students and alumni were waiting on the tarmac at Spokane's Geiger Field to celebrate.

After becoming the first Black person from Spokane to pass the Washington bar exam,<sup>3</sup> Maxey opened his own law firm in Spokane in 1951. One of his first cases involved Eugene Breckenridge, a Black man who had applied to be a teacher with the Spokane School District. Despite his seemingly exceptional credentials—four years'

service in World War II as an Army sergeant, a bachelor's degree in chemistry with a minor in biology; a master's degree in education from Whitworth College (now Whitworth University), and an award for being the college's outstanding student teacher—Breckenridge was deemed not qualified to teach seventh grade math and science at Havermale Junior High. Maxey passionately defended Breckenridge. After much argument and presentation of Breckenridge's case and even a threat to involve the NAACP, Breckenridge was hired for the role. According to Maxey, the superintendent came to "recognize the morality" of his argument.

Throughout his career, Maxey continued to take on cases that would challenge the status quo and the norms of discrimination and segregation. In a series of lawsuits, Maxey helped end racial restrictions at many of

CONTINUED >

**Carl Maxey: Boxer, Lawyer, Civil Rights Champion**

CONTINUED >

Spokane's all-white social clubs. In another prominent case, known as the "Haircut Up-roar," a Gonzaga University student from Liberia was refused service at a local barbershop. Dozens of students, many of them white, picketed the barbershop in support of their classmate. Maxey filed a complaint with the State Board of Discrimination and argued the case before the board's tribunal, which ultimately ruled against the barber. In yet another case, Maxey successfully defended a Gonzaga University student body president who was arrested for yelling, "Warmonger!" at vice-president Spiro Agnew during an event.

Maxey continued to grow as an advocate for civil rights, and eventually got into politics himself. In the 1960s and 1970s, he ran unsuccessfully for several local offices. In 1968, he became the state spokesman for presidential candidate Eugene McCarthy. While serving in that position, he attended the 1968 Democratic Convention in Chicago. By this time, Maxey was strongly opposed to the Vietnam War. In 1970, Maxey ran in a primary race against Washington's longtime Democratic Senator Henry "Scoop" Jackson. Maxey was a lifelong Democrat, but he disagreed with Jackson's support of the war. Maxey hoped to get 10 percent of the vote against Jackson. He got 13 percent.

Although Maxey didn't win, the attention he received during his senate campaign was likely a factor in landing him one of the



**Morgan Maxey** graduated from the University of Washington in 2014 and from Gonzaga University School of Law in 2017. Since his graduation, he has been named the Eastern Washington representative for the Loren Miller Bar Association and continues to further his interest in promoting diversity through his work with the Spokane County Bar Association and the Spokane County Diversity Section. Maxey specializes in criminal defense work and family law representation, while taking on some civil rights work as well. He is Carl Maxey's grandson, the fourth oldest of six. He can be reached [morgan@maxeylaw.com](mailto:morgan@maxeylaw.com).

*The artwork, "Unforgettable" by Reinaldo Gil Zambrano, is on display at the Center for Civil and Human Rights at Gonzaga University School of Law.*



**SIDEBAR**

**In His Name: Aiding Social Justice**

Gonzaga University School of Law established the Carl Maxey Social Justice Scholarship Program in January 2021. The scholarship provides financial assistance to students from historically underserved communities who show a commitment to social justice. Last year, three first-year law students became the inaugural scholars in this program; all three received full tuition scholarships to allow them to pursue careers in social justice and to serve the public good. More information about the program can be found here:

[www.gonzaga.edu/school-of-law/admission/financial-aid/scholarships/carl-maxey-social-justice-scholarship-program](http://www.gonzaga.edu/school-of-law/admission/financial-aid/scholarships/carl-maxey-social-justice-scholarship-program).

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most contentious cases of his legal career—the trial of the Seattle Seven. The Seattle Seven, members of an anti-Vietnam-War group called the Seattle Liberation Front, organized a demonstration outside the Federal Courthouse in Seattle on Feb. 17, 1970, to protest the sentencing of another group of activists called the Chicago Seven. Police intervened and the demonstration turned violent. The courthouse was vandalized with rocks and paint.<sup>4</sup>

The seven defendants were charged with conspiracy to incite a riot and destroy public property. Maxey became one of four defense lawyers on the case.<sup>5</sup> The trial, which began in Tacoma in late 1970, was marked by frequent disruptions by the defendants. Eventually, U.S. District Court Judge George Boldt declared a mistrial and issued contempt citations to the defendants. When the defendants returned to court on their contempt charges, even more chaos ensued. The contempt charges were eventually dropped in 1972, but most of the defendants ended up serving jail time.

Other highlights in Maxey's illustrious

career include running for vice president on an independent ticket with Eugene McCarthy, serving as a Democratic Party Convention delegate, and co-founding the Loren Miller Bar Association. Maxey left a legacy of perseverance and a demand for equality, and will forever be known as a voice for change for the Inland Northwest and Washington as a whole. Maxey died in 1997 at the age of 73. His spirit lives on through his two children, Bill and Bevan Maxey, and their grandchildren. **BN**

**NOTES**

1. [www.nytimes.com/1998/01/04/magazine/the-lives-they-lived-carl-maxey-type-a-gandhi.html](http://www.nytimes.com/1998/01/04/magazine/the-lives-they-lived-carl-maxey-type-a-gandhi.html).
2. <https://gozags.com/honors/gonzaga-athletic-hall-of-fame/carl-maxey/37>.
3. <https://historylink.org/file/8015>.
4. [www.seattletimes.com/seattle-news/how-a-protest-spawned-the-seattle-seven-a-contentious-court-battle-and-the-big-lebowski/](http://www.seattletimes.com/seattle-news/how-a-protest-spawned-the-seattle-seven-a-contentious-court-battle-and-the-big-lebowski/).
5. [www.seattletimes.com/pacific-nw-magazine/protest-on-trial-chronicles-the-chaos-and-the-surprising-conclusion-of-the-1970-trial-of-the-seattle-7/](http://www.seattletimes.com/pacific-nw-magazine/protest-on-trial-chronicles-the-chaos-and-the-surprising-conclusion-of-the-1970-trial-of-the-seattle-7/).

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Attorney Fee in Washington,*  
52 Gonz. L. Rev. 1 (2017)

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Kayshel v. Chae, Inc., 486 P.3d 936 (2021)  
Estate of Hunter (\$2.8 million fee award in arbitration)  
Easterly v. Clark County, 2 Wn. App. 2d 1066 (2018)  
Arnold v. City of Seattle, 185 Wn.2d 510, 374 P.3d 111 (2016)  
Bright v. Frank Russell Investments, 191 Wn. App. 73, 361 P.3d 245 (2015)

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COVER  
STORY

# START UP YOUR BAR

**ALL  
ABOUT  
BAR**

Included in the coverage of the ETHOS (Examining the Historical and Organizational Structure of the Bar) process in the following pages are a Q&A with University of Connecticut School of Law Professor Leslie Levin, a timeline of the history of the regulation of the practice of law in Washington, and two perspectives pieces—one urging the WSBA to retain its current structure, and one calling for structural change.

This Q&A is based on an article entitled “The End of Mandatory State Bars?,” 109 GEORGETOWN L. REV. ONLINE 1 (2020), written by Professor Leslie Levin.

Professor Leslie Levin, the Hugh Macgill Professor of Law at the University of Connecticut School of Law, is an expert on the legal profession, ethical decision making, and lawyer discipline. In her article “The End of Mandatory State Bars?,” she posits that the country’s 31 mandatory state bars “are facing an existential threat” following the U.S. Supreme Court’s 2018 decision in *Janus v. AFSCME*.<sup>1</sup> She offers her scholarly insights, excerpted from her article, here for members.

**Q. Can you briefly summarize the legal challenges to mandatory bars and how the U.S. Supreme Court has addressed them most recently?**

**A.** The chief objections to compelled membership have been based on freedom of association and freedom of speech grounds.

**1961: *Lathrop v. Donohue*.**<sup>2</sup> The Court rejected a Wisconsin lawyer’s claim that he could not be compelled to join and support a state bar association which expressed opinions on, and attempted to influence, legislation. The Court relied on its earlier decision in *Railway Employees’ Department v. Hanson*,<sup>3</sup> in which it held that the Railway Labor Act did not abridge

railroad employees’ rights of association by authorizing agreements that effectively conditioned employees’ continued employment on the payment of union dues.

**1990: *Keller v. State Bar of California*.**<sup>4</sup> The Court considered a claim that use of petitioners’ mandatory state bar dues to finance ideological or political activities with which petitioners did not agree violated their First and 14th Amendment rights. The *Keller* Court noted the “substantial analogy” between the relationship of the state bar and its members and the relationship of employee unions and their members. It discussed its 1977 decision in *Abood v. Detroit Board of Education*,<sup>5</sup> in which nonunion

workers challenged requirements that they pay agency shop dues to the union; the *Abood* Court held that it would violate the workers’ First Amendment rights to use those dues to fund the expression of political or ideological views not germane to the union’s duties as the collective bargaining representative. Relying on *Abood*, the *Keller* Court unanimously held that the California State Bar could constitutionally use bar dues to fund activities related to the goals of regulating the legal profession and improving the quality of legal services but not to endorse or advance other political or ideological issues.

**2018: *Janus v. AFSCME*.** The Court considered whether an Illinois statute that required public employees to pay agency fees to a union that took collective bargaining and other positions with which the petitioners disagreed violated their First Amendment rights by compelling them to subsidize private speech on matters of substantial public concern. The Court applied an “exacting scrutiny” standard when judging the constitutionality of the compelled agency fees, and explained the standard requires that a compelled subsidy of speech “serve a compelling state interest that cannot be achieved through means significantly less restrictive of associational freedoms.” The Court found that the state’s compelling interest in “labor peace” could readily be achieved through significantly less restrictive means than assessment of agency fees. It pointed to the United States

CONTINUED >

**BRIEF HISTORY OF THE REGULATION OF THE PRACTICE OF LAW IN WASHINGTON**

**1888-90**

Washington Bar Association established. . . . Renamed the Washington State Bar Association.

**1891**

Washington Supreme Court enacts Rules for Examination and Admission of Attorneys.

**1908**

American Bar Association (ABA) adopts Canons of Professional Ethics at its annual meeting in Seattle.

**1909**

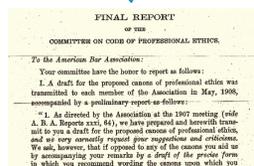
Board of Law Examiners legislatively authorized for Bar application and examination process.

**1917**

Board of Law Examiners regulatory role expanded. . . . ABA Code of Ethics adopted.

**1921**

State Bar Association of North Dakota becomes first legislatively created unified bar. > Nine states follow suit between 1921 and 1932.



## A Q&A with Leslie Levin

CONTINUED >

Postal Service employment experience, which it believed demonstrated that an exclusive union representative can work effectively for employees without assessing agency fees. In its 5-4 decision, the Court held that public sector unions could no longer extract agency fees from nonconsenting employees. In reaching this result, the majority overruled *Abod*, finding it “poorly reasoned,” and inconsistent with its other First Amendment cases.

Mandatory state bars in Louisiana, Michigan, North Dakota, Oklahoma, Oregon, Texas, Utah, and Wisconsin have faced constitutional challenges based on the reasoning in *Janus*.

**UPDATE:** The U.S. Supreme Court on April 4, 2022, denied certiorari in three cases challenging the integrated-bar structure: *Taylor v. Heath*<sup>6</sup> (Michigan), *Schell v. Darby*<sup>7</sup> (Oklahoma), and *McDonald v. Firth*<sup>8</sup> (Texas).

### Q. What do you see as the main issues when considering whether the mandatory state bar model is constitutional?

**A.** The first issue is whether there is a compelling state interest in maintaining mandatory bars. In the Supreme Court’s

2014 decision in *Harris v. Quinn*,<sup>9</sup> it indicated that mandatory dues serve a compelling government purpose, which includes the “State’s interest in regulating the legal profession and improving the quality of legal services” and “a strong interest in allocating to the members of the bar, rather than the general public, the expense of ensuring that attorneys adhere to ethical practices.

So even if the states’ interests identified by the Court in *Keller* and in *Harris* are deemed “compelling,” mandatory bars will need to show that those interests cannot be achieved by significantly less restrictive means than compelled dues payments. In my opinion, it will be difficult for mandatory bars to demonstrate that they are demonstrably better than voluntary bars at regulating the legal profession and improving the quality of legal services for the public. Both mandatory and voluntary bars promote access to justice initiatives and provide CLEs and other professional development opportunities to improve lawyers’ performance. States with voluntary state bars do not appear to have more lawyers who perform poorly in practice than states with mandatory bars.

Moreover, in the jurisdictions with voluntary state bars, states use lawyer registration fees, bar application fees, and other bar-related fees paid by lawyers to fund lawyer discipline and other regulation. In other words, the counterargument will be that there are other ways to achieve the state interest in having lawyers pay for their own regulation.

**Leslie Levin** is the Hugh Macgill Professor of Law at the University of Connecticut School of Law. She can be reached at [leslie.levin@uconn.edu](mailto:leslie.levin@uconn.edu).



### Q. Who benefits from mandatory bars?

**A.** Originally, proponents of mandatory state bars argued that they would benefit both lawyers and the public, but there have been few efforts to closely examine who benefits from mandatory bars. It’s critical to do so, not only for public policy reasons, but because the question of whether the public actually benefits from mandatory bars is directly relevant to the question of whether there is a compelling state interest in maintaining mandatory bars.

### Q. How can mandatory bars benefit lawyers?

**A.** Belonging to any type of bar association often provides lawyers with educational and other benefits. In addition, because of their size, stature, and financial resources, mandatory bars can be a powerful voice for lawyer interests, enabling lawyers to be deeply involved in the regulation of the profession. State bars’ official or quasi-official role in the rulemaking process often allows them to set the rulemaking agenda, define the issues and scope of issues they

## BRIEF HISTORY OF THE REGULATION OF THE PRACTICE OF LAW IN WASHINGTON > CONTINUED

1932-33

The WSBA proposes State Bar Act.



1933

Legislature adopts State Bar Act: Membership to WSBA becomes mandatory and regulatory functions are assigned to the WSBA.

1976 (+/-)

Two important separation-of-powers cases are decided.\*



1987

WA Supreme Court adopts General Rule (GR) 12. Sets forth WSBA general purposes, as well as specific activities authorized and prohibited.

2001

WA Supreme Court adopts GR 24 defining the practice of law and GR 25 creating the Practice of Law Board.

2007

GR 12 amended to delegate authority to the WSBA to administer certain boards and committees established by court rule or order.

**CHAPTER 94**  
(RCW 9A.04)

**CREATION WASHINGTON STATE BAR ASSOCIATION**  
AN ACT to create an association to be known as the "Washington State Bar Association," to provide for its organization, government, membership and powers, to regulate the practice of law and to provide penalties for the violation of said act and providing an act or parts of acts in conflict therewith.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. Title of Act. This act may be read, known and cited as the state bar act.

SEC. 2. Objects and Powers. There is hereby created as an agency of the state, for the purpose and with the powers hereinafter set forth, an association to be known as the Washington State Bar Association, hereinafter designated as the state bar,

\*NOTE: The first regarding the Legislature’s power to audit Bar-collected funds and the second about escrow agents and the practice of law.

will study, exert control by determining who serves on the committees that consider the issues, and prevent proposals or recommendations from proceeding to the court for consideration.

**Q. Is there anything surprising you have found during your research?**

**A.** I was surprised to realize how many regulatory functions have moved out of the mandatory bars in some states. I was also surprised by how constrained some mandatory state bars are in their ability to advocate for changes in the law on a broad range of important issues. As a result, state legislatures are sometimes deprived of the expertise of the state bar when they consider new legislation. **BN**

SIDE BAR

**NOTES**

1. Janus v. AFSCME, 585 U.S. \_\_\_, 138 S. Ct. 2448, 201 L. Ed. 2d 924 (2018).
2. Lathrop v. Donohue, 367 U.S. 820 (1961).
3. Railways Employees' Department v. Hanson, 351 U.S. 225 (1956).
4. Keller v. State Bar of California, 496 U.S. 1 (1990).
5. Abood v. Detroit Board of Education, 431 U.S. 209 (1977).
6. Taylor v. Heath, 4 F.4th 406 (6th Cir. 2021).
7. Schell v. Darby, 11 F.4th 1178 (10th Cir. 2021).
8. McDonald v. Firth, 4 F.4th 229 (5th Cir. 2021).
9. Harris v. Quinn, 573 U.S. 616 (2014).
10. Operating under the delegated authority of the Washington Supreme Court, the Washington State Bar Association administers the bar admission process, including the bar exam; provides record-keeping and licensing functions; and administers the professional discipline system.

**MANDATORY/INTEGRATED/UNIFIED BARS**

Definition, numbers, and functions

- > Bars to which lawyers are required to pay dues and belong as a condition of bar licensure.
- > Often established as state agencies or public corporations that are instrumentalities of the judiciary or the state supreme court. Employ professional staff to perform much of the regulatory work.
- > Work to advance lawyers' interests while also performing some regulatory functions such as admission, discipline, or other licensing requirements. Missions include improving the administration of justice and protecting the public.
- > Perform many of the same functions as voluntary bars with respect to: socializing lawyers into the norms of the legal profession, educating lawyers about changes in the law, supporting them in their work, providing networking opportunities and member benefits such as discounts for professional services, playing a role in the development and adoption of the law governing lawyers, and advocating for lawyers' economic interests.
- > Significantly constrained in their ability to advocate on issues not directly related to the legal profession.
- > Mandatory bars are established in 31 states and the District of Columbia:
  - Only eight<sup>10</sup> retain some responsibility for both bar admission and discipline and other regulatory functions, such as administering a Client Protection Fund (CPF).
  - Sixteen have some responsibility for administering either bar admission or lawyer discipline and other regulatory activities.
  - Eight perform only limited regulatory functions, such as administering a CPF, fee dispute arbitration, or mandatory CLE.

**VOLUNTARY STATE BARS**

Definition and functions

- > Are composed of some portion of the state's licensed lawyers.
- > Missions focus primarily on lawyers' interests and secondarily on improving the administration of justice.
- > Freer to advocate on a wide variety of issues affecting clients and the public; often draft and support a broad range of legislation.

**2009**

Board of Governors votes 7-6 not to recommend separating the lawyer discipline system from the WSBA.

**2013**

GR 12 amended to state that the license fee amount is subject to review and modification by the Washington Supreme Court.

**2014-15**

Board Governance Task Force makes multiple recommendations, including to "repeal most provisions of the State Bar Act." Board Work Group concludes those changes unnecessary.

**2017**

GR 12 amended again: WA Supreme Court also adopts ABA Model Regulatory Objectives as GR 12.1.

**2019**

WA Supreme Court Bar Structure Work Group formed.  
*(For more details, see Perspectives piece on page 37)*

**2022**

Board of Governors launches process for Examining the Historical Organization and Structure of the WSBA (ETHOS).

**ALSO IN 2013:** Nebraska State Bar Association ordered to semi-deunify. The State Bar of California legislatively deunifies in 2017 with creation of the California Lawyers Association.

# STRUCTURE

ALL ABOUT BAR

# Perspectives

A forum for members to express their opinions and start conversations about important legal issues.

Have a response? We want to hear it, via [wabamews@wsba.org](mailto:wabamews@wsba.org).

## Mandatory Bar Structure:

# If It Ain't Broke, Don't Change It

BY NANCY HAWKINS

The WSBA has examined its governance structure several times over the years. Another such examination is currently underway, at the request of the Washington Supreme Court. I urge the WSBA to maintain its current status as an integrated and mandatory bar association, and I urge you to support that structure. Why? To quote Winston Churchill, "Many forms of Government have been tried, and will be tried in this world of sin and woe. No one pretends that democracy is perfect or all-wise. Indeed it has been said that democracy is the worst form of Government except for all those other forms that have been tried from time to time." In other words, complain about our system all you want, but the alternatives are worse for members and the public.

The so-called "experts" on bar association structure have been predicting doom and gloom about our structure for years. Nothing that was predicted has come true. No court has struck down our structure. In fact, just this year, the U.S. Supreme Court denied certiorari on three cases that challenged bar association structures in Texas, Michigan and Oklahoma. Significantly, the WSBA structure is better than the structures that were in place in each of those states. Our structure is sound because of our differences with those (and other) states. For those who have not looked at the WSBA's actual activities (and not just at the death and discipline notices in *Bar News!*), the WSBA is not a political organization. It does not endorse political candidates. It does not contribute funds to political candidates. Indeed, it cannot do any of these things, under GR 12.

We are and should continue to be a nationwide leader in giving members the option of a license fee deduction (*Keller* deduction) for any costs associated with a WSBA program or activity that is not "germane" to our mission. Each year, the WSBA determines whether any funds have been spent on possibly non-germane activities and calculates the amount—called the *Keller* deduction—that members may deduct from their license fees. The process is easily exercised and does not require independent argument by members. The WSBA's calculations of the amount of the *Keller* deduction are made public. <https://www.wsba.org/for-legal-professionals/license-renewal/keller-deduction>. Members can challenge the amount of the *Keller* deduction, as has been done (rarely) over the years but, again, this is not required before taking the calculated deduction.

I have heard many suggestions for changing the structure of the WSBA. A frequent one is to eliminate every program or activity that is not directly related to the licensing or discipline of Bar members and turn those regulatory functions over to the state of Washington, abandoning the long tradition of law as a self-regulating profession. The claim is that this will be more efficient and reduce member license fees. This is a myth, both practically and financially. Because

**Nancy Hawkins** is a sole practitioner who has concentrated her practice in the area of family law for the past 40 years. She serves on the Executive Committee of the WSBA Family Law Section. She has been a chapter author of the Washington State Bar Association's *Washington Family Law Deskbook* for many years and a speaker at numerous CLEs. She was honored by the WSBA's Family Law Section as the 2016 Family Law Attorney of the Year.



**The WSBA structure is sound. The vast majority of WSBA funds go toward the costs of licensing, regulation, and discipline of Bar members.**

CONTINUED >

# Voluntary Bar Structure: 'A Different Approach for the Future'

BY KING COUNTY BAR ASSOCIATION & JAMES A. BAMBERGER

In September 2018, the Washington Supreme Court announced it would undertake a “comprehensive review of the structure of the bar” in light of recent case law with First Amendment and antitrust implications for bar associations. In November 2018, the court provided a charter for a 10-member Bar Structure Work Group to review the WSBA’s structure and make a recommendation back to the court in six to eight months. On Sept. 4, 2019, the Work Group completed its final report, including a minority report. On Sept. 25, 2019, the Washington Supreme Court issued a response to the Work Group’s final report that recommended the WSBA’s integrated structure be retained.

***The following is the text of a letter that the King County Bar Association (KCBA) submitted to the Washington Supreme Court on August 27, 2019, with regard to the recommendation from the Bar Structure Work Group. The KCBA continues to stand by the proposals included in its August 2019 letter.***

We write, in the spirit of amicus curiae, to ask the court to consider a different approach for the future of our Washington State Bar Association than the recommendation from the Bar Structure Work Group to retain the existing structure. Specifically, we believe the legal profession and the public would be best served if the court proceeds with a comprehensive restructure of the Washington State Bar Association that proactively protects the access to justice and diversity work of the WSBA.

Founded in 1886, the King County Bar Association represents over 14,000 attorneys, judges, law professors, and law students in King County. Our mission is to support our diverse membership by promoting a just, collegial, and accessible legal system and profession; to work with the judiciary to achieve excellence in the administration of justice; and to serve our local community through organized pro bono legal services.

Like the court, the King County Bar Association is a strong proponent of the important work being facilitated by the WSBA in the areas of access to justice and diversity that benefits our state’s justice system. However, we are concerned that the successes and pending efforts underway in access to justice and diversity may be threatened if the court does not take affirmative steps to protect these functions by exercising the court’s plenary leadership role and directing a new structure for the WSBA.

Our analysis of recent events both in Washington state and across the country is that momentum will continue to grow nationwide to bifurcate mandatory bar associations. Whether rooted over issues of compelled speech, antitrust and unfair trade practices, or political

CONTINUED >

**James A. Bamberger**, Director of the Washington State Office of Civil Legal Aid, sent a letter to the Washington Supreme Court agreeing with the statement submitted to the Washington Supreme Court by the King County Bar Association (KCBA) in 2019.

**We call on the court to resist the status quo ... and instead adopt a bold forward-thinking vision that protects those programs in which we all believe so strongly.**

## ETHOS UPDATE

### Future Structure of the WSBA Study

In light of recent constitutional challenges to integrated bar associations across the country, the Washington Supreme Court has asked the WSBA Board of Governors to consider three questions and make a recommendation back:

- 1. Does current federal litigation regarding the constitutionality of integrated bars require the WSBA to make a structure change?**
- 2. Even if the WSBA does not have to alter its structure now, what is the contingency plan if the U.S. Supreme Court does issue a ruling that forces a change?**
- 3. Litigation aside, what is the ideal structure for the WSBA to accomplish its mission?**

The Board of Governors named the study process ETHOS—Examining the Historical Organization and Structure of the Bar. There will be eight full-day meetings between January and August 2022—open to the public via Zoom and in person at the WSBA offices—to gather information and build a common understanding of the issue, to explore other bar structures, and to form a recommendation. Throughout each phase, the Board has committed to gathering wide stakeholder feedback. In addition to specific outreach opportunities and comment periods during meetings, you can send feedback to [boardfeedback@wsba.org](mailto:boardfeedback@wsba.org). The next meetings are June 18 and July 23. [BN](#)

#### MORE ONLINE

For more information—such as the ETHOS charter, meeting dates, and legal background—visit [www.wsba.org/about-wsba/who-we-are/board-of-governors/bar-structure-study](http://www.wsba.org/about-wsba/who-we-are/board-of-governors/bar-structure-study).

## Mandatory Bar Structure: If It Ain't Broke, Don't Change It

CONTINUED >

the vast majority of the work of the WSBA is related to licensing and discipline, there would likely be little reduction in license fees to fund this work, whether such fees are paid to the state of Washington or to the WSBA. Even more problematic, there would likely be no increase in efficiency. In some states that have done so, such as California, overall costs have increased, not decreased.

Another frequent suggestion is to separate the WSBA practice sections from the larger WSBA, so the sections would be “free” to do what they want and so that license fees would be reduced. First, sections are voluntary and supported by voluntary section dues and other non-

mandatory payments, so there would be no effect on WSBA member license fees. While WSBA staff provide assistance, sections pay for that assistance through a per-member charge and splits of product profits. Even more significantly, many section members (including me) have spoken in opposition to a change in this structure. I am convinced that separating sections from the WSBA will lead to the demise of most sections and duplication of costs and administrative efforts for those that survive. This won't just hurt the attorneys practicing in those lost sections, it will hurt all of the sections. Sections want to succeed in their individual endeavors, but they also want to be a resource for ideas and strategies to each other within the larger WSBA structure.

Another reason I've heard advanced for changing the structure of the Bar is that the WSBA is too Seattle-centric. Of course,

the vast majority of the Bar membership is found in the Seattle and Puget Sound region. These numbers mirror the population distribution in Washington state, so this is not a surprise. The WSBA cannot change this reality by changing its structure. The Bar's present structure, with members of the Board of Governors elected from every congressional district, incorporates representation from all parts of Washington. There are also policies in place that encourage geographic diversity in section leadership. The WSBA takes geographic diversity seriously. It also takes the issue of diversity seriously. Those in leadership and at all levels of the organization are committed to learning from one another and from members as to issues in all parts of the state in need of our attention. For example, one recently developed WSBA project called STAR (Small Town and Rural Practice Committee) was designed to help rural

## Voluntary Bar Structure: 'A Different Approach for the Future'

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considerations, the result is the same. The structure of mandatory bar associations is under scrutiny from both federal courts and state legislatures (including our own elected officials in Olympia). Most recently we have witnessed our colleagues in California, the largest state bar in the nation, endure a crisis in leadership and vision for the profession before the solution of a bifurcated bar structure was adopted in 2018. The pending State Bar Association of North Dakota appeal most likely will result in a forced decision of these questions for remaining mandatory bar associations by the U.S. Supreme Court.<sup>1</sup>

The Washington Supreme Court, along with the state's legal profession, has the opportunity to act now to protect the things that matter most to us in Washington, rather than be forced to react to solutions imposed from other branches of government whether based in Olympia or Washington, D.C. Action now would also demonstrate to the legal profession that the court has heard the underlying messages of discontent by lawyers across the state with the status quo.

We propose that these three principles be adopted by the court:

**1. Regulation of the practice of law best done by the court.** We recommend moving the mandatory functions of the

WSBA to a new Supreme Court-overseen entity similar to the Administrative Office of the Courts. This new office would have responsibility for all attorney, LLLT, and LPO licensing, as well as discipline, MCLE regulation (not course offerings), and client protection functions of the WSBA and would be funded by a court-imposed license fee. A court-appointed advisory committee could oversee this work with relevant current WSBA staff reassigned to this entity.

**2. Access to justice and diversity are judicial system responsibilities.** The court and the WSBA have achieved important successes with these initiatives that are currently funded by license fees and managed by the WSBA. Yet so long as they are tied to the license fee, even with tweaks to what is included in a “Keller” deduction, they are still at risk in the future. We believe access to justice and diversity should not be solely the responsibility of licensees, but instead a core function of society as a whole. Instead of housing these activities within the WSBA, we suggest these functions become Supreme Court-administered commissions such as the current Gender & Justice Commission, elevating them to the prominence they deserve. Funding should come not from license fees but instead should be treated as a judicial branch operation, fully funded by legislative appropriation. The

cost would be minimal in the context of the judicial branch overall budget. This approach protects these activities from challenges by licensees or others, including the U.S. Supreme Court.

**3. Non-mandatory activities are best served in a new statewide voluntary bar organization.** Remaining activities currently conducted by the WSBA (e.g., sections, publications, YLD, awards, and judicial evaluation to name but a few) should be transferred to a voluntary statewide nonprofit that is funded by voluntary dues and overseen by attorneys themselves, independent of the court. This organization would serve as the bar's “trade association,” promoting the interests and needs of member attorneys without conflicting responsibilities for nonmember-focused efforts. The current leadership of the WSBA could oversee this refocused organization and take it to new levels of success.

We appreciate that our proposal would require significant planning and organization to implement, but we do not believe these challenges are insurmountable. Utilizing a small amount of WSBA reserve funds the court could hire qualified professionals to design a plan to implement these changes and conduct the transition. The court need adopt only the three broad principles we propose and then task professionals to proceed with the implementation. KCBA stands ready to actively

areas that lack sufficient numbers of lawyers to meet community legal needs.

The WSBA structure is sound. The vast majority of WSBA funds go toward the costs of licensing, regulation, and discipline of Bar members. The WSBA also funds and works on programs that benefit the state through activities such as studying court rules to identify needs for change to improve functionality and identify barriers to litigants within court systems (particularly around technology issues). In addition, the WSBA works on issues of diversity and inclusion in an effort to encourage and support a more diverse legal profession and meet the needs of diverse litigants. These programs are part of the state's compelling interest to allow mandatory and integrated bar associations; they work to protect the public and uphold the integrity of the profession in a way that a voluntary bar cannot. [BN](#)

participate in and support this work.

The Washington Supreme Court has the ability to create a nationally recognized best practices model for the regulation of the practice of law and the administration of justice—just as it did when it innovatively launched programs here such as the Access to Justice Board. We call on the court to resist the status quo of a single mandatory bar structure and instead adopt a bold forward-thinking vision that protects those programs in which we all believe so strongly.

**James A. Bamberger's letter, in part:**

I have reviewed the very thoughtful August 27, 2019, letter sent by the King County Bar Association on this subject. In the interest of brevity, I adopt the analysis and recommendations set forth in that letter in their entirety. Whether by changes in GR 12 or otherwise, I encourage the Court to take action that is grounded in the three principles outlined in the KCBA letter and reject the “do-nothing-for-now” recommendation offered by the Structure Group. [BN](#)

**NOTE**

1. The U.S. Supreme Court vacated the decision in *Fleck v. Wetch*, 139 S. Ct. 590 (2018), and remanded the case for further consideration in light of *Janus*. In 2019, the Eighth Circuit again ruled for the defendants, essentially on procedural grounds. *Fleck v. Wetch*, 937 F.3d 1112 (8th Cir. 2019), *cert. denied*, 2020 WL 1124433 (mem.) (Mar. 9, 2020) (No. 19-670).

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# Protecting the Independence of Public Defenders

*WSBA Board of Governors proposes new court rule and adopts new standards*

BY ROBERT C. BORUCHOWITZ AND LARRY JEFFERSON

Two Pennsylvania public defenders were fired after they filed an amicus brief in the state supreme court in a case about how the state implements cash bail.<sup>1</sup> The first chief public defender in Birmingham, Alabama, a Black woman, was fired after, among other things, her office obtained dismissals in 20 percent of their cases and favorable verdicts or mistrials in 66 percent of the cases that went to trial.<sup>2</sup>

#### NOT IN OUR BACKYARD?

That kind of interference would never happen in Washington, right? Regrettably, in some Washington jurisdictions, local gov-

ernment officials or local courts have interfered with the independence of public defenders.

In Cowlitz County, the chief public defender was recently fired after her office filed public disclosure requests about prosecution practices. In addition to the public disclosure requests, the chief public defender had hired new staff, implemented procedural changes to comply with the WSBA Standards for Indigent Defense, and acquired new state funding resources for the office. A condition in the settlement offer by the county was that the defender withdraw all pending public disclosure

requests she had made in her role as chief defender.<sup>3</sup> Although she did not accept that offer, her office withdrew one of the requests. The chief defender's termination can have a chilling effect on her former colleagues and on others in other counties.

Also troubling is a recent example in Asotin County in which the county hired a lawyer to be a public defender when the lawyer was not admitted to practice in Washington.<sup>4</sup>

In Grays Harbor County, the juvenile court in 2014 adopted a public defense "case weighting policy" that had several troubling elements. Under this policy, six hours of attorney time was assigned as "the average time expended in the completion of a juvenile offender case, which amount of time ensures effective representation in all cases." If an attorney were assigned a "serious offense or complex case" the attorney could count the case as two cases "after the attorney has addressed his or her concerns with the Presiding Judge." The policy further provided that for hearings for viola-

tions of sentencing conditions, an attorney would be awarded only .15 of a case credit and that the attorney on average could provide representation in 45-60 minutes.<sup>5</sup> This policy no longer is in place.

Court rules require that any case-weighting provisions must be filed with the state Office of Public Defense, must recognize that some cases require greater weight “based on a method that adequately assesses and documents the workload involved,” and must be consistent with the Standards for Indigent Defense and professional performance guidelines and ethics rules. See CrR 3.1, Standard 3.5.

Under the Grays Harbor County Juvenile Court’s case-weighting system, lawyers representing children in Grays Harbor were not encouraged to invest more than 12 hours in a “serious offense or complex case.” The idea that a lawyer representing a child on any kind of alleged violation could interview the client, review discovery, investigate and otherwise prepare the case, and conduct a hearing, all in less than an hour, disregards the importance of extra care in communicating with children and discounts the importance of preparation. It also assumes that the sentencing violation allegation is always correct and that there are no mitigating circumstances that can be documented and presented to the court. Although the Grays Harbor County Juvenile Court Case Weighting Policy stated that the system adopted “is consistent with the Standards, professional performance guidelines, and the Rules of Professional Conduct,” in these authors’ opinion, it was not.

In 2020, in a lawsuit filed by the American Civil Liberties Union of Washington, the Washington Supreme Court declined to find that the state had liability for the purported failing of Grays Harbor County to provide effective juvenile public defense representation, based on the evidence presented, but found that “the plaintiffs’ claims alleging systemic, structural deficiencies in the state system of public defense remain viable.” *Davison v. State*.<sup>6</sup> In his concurrence, Justice Steven González, referring to allegations that a juvenile had been held in solitary confinement for more than a week, noted that “[t]his instance of ineffective assistance is especially egregious.” He cited the report of an expert witness, Simmie Baer, who wrote:

The unfathomable imbalance between the sub-minimal representation provided to child clients by the juvenile public defender in Grays Harbor Juvenile Court and a minimal standard of advocacy employing state and federal supreme court decisions based on the vast wealth of research on adolescent brain development and the impact it has on juvenile decision-making is inexplicable, unjustifiable and unconstitutional. The dearth of advocacy provided to these youth is nothing more than a “meet them and plead them” format. ... [T]he public defender in Grays Harbor Juvenile Court fails, on a daily basis, to provide even minimally effective representation to her child clients at every critical stage of the case.

*Davison v. State*, 196 Wn.2d 285, 307. Justice González added, “The State does not attempt to defend juvenile public defense in Grays Harbor County.”

Fundamentally, justice requires that every person accused of a crime receive competent and effective legal representation. This is to ensure that the bedrock principles of the “presumption of innocence” and the “right to trial by a jury” are preserved. These principles require that the defense function is independent of political or judicial influence. The examples just discussed can chill defenders’ willingness to provide truly zealous advocacy. The WSBA Board of Governors recently proposed a new court

rule, and adopted new Standards for Indigent Defense, aimed at protecting public defenders’ independence.

### STRENGTHENING WASHINGTON’S STANDARDS FOR INDIGENT DEFENSE

Based on a recommendation from the Council on Public Defense, the WSBA Board of Governors has proposed a new General Rule 42 “to prevent conflicts of interest that may arise if judges control the selection of public defense administrators or the attorneys who provide public defense services, the management and oversight of public defense services, and the assignment of attorneys in individual cases.”<sup>7</sup>

The proposed rule provides: “Judges and judicial staff in superior courts and courts of limited jurisdiction shall not select public defense administrators or the attorneys who provide public defense services.” Judges and judicial staff would be prohibited from managing or overseeing public defense services. The proposed rule also states, “Judges should encourage local governments to have attorneys with public defense experience manage and oversee public defense services.”

The Board also approved new Standards for Indigent Defense, developed by the WSBA Council on Public Defense, through its Independence Committee, to further protect the independence of public defenders. The new Standards have been added, effective September 2021, to the long-standing Standards for Indigent Defense.<sup>8</sup>

The first addition is an amendment to Standard 18, Guidelines for Awarding Defense Contracts:

Judges, judicial staff, city attorneys, county prosecutors, and law enforcement officers shall not select the attorneys who will be included in a contract or an assigned counsel list.

This provision is intended to avoid conflicts of interest and to maintain the public defenders’ ability to advocate effectively for their clients without fear of losing their contract or assigned counsel work.

The Board also approved a new Standard Nineteen, Independence and Oversight of Public Defense Services, which begins:

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**Robert C. Boruchowitz** is professor from practice and director of The Defender Initiative at Seattle University and the assessor for Public Defense Services for Edmonds. He can be contacted at [boruchor@seattleu.edu](mailto:boruchor@seattleu.edu). Each of them has decades of public defense experience.



## Protecting the Independence of Public Defenders

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Public defense providers should not be restrained from independently advocating for the resources and reforms necessary to provide defense related services for all clients. This includes efforts to foster system improvements, efficiencies, access to justice, and equity in the legal system.

### PROTECTIONS AFFORDED BY THE STANDARDS

Based on publicly available information, had Cowlitz County followed the principles in new Standard Nineteen, Independence and Oversight of Public Defense Services, the chief public defender, who was fired after filing public disclosure requests, would have been protected. Standard Nineteen would also protect defenders who challenge racially biased practices and who advocate for increased funding for their offices. Defenders often are in a unique position to understand and document flaws in the criminal legal system.

New Standard Nineteen also provides that “Judges and judicial staff shall not manage and oversee public defense offices, public defense contracts, or assigned counsel lists.” It states that trial courts “shall not select public defense administrators or the attorneys who provide public defense services.” It continues: “Attorneys with public defense experience insulated from judicial and political influence should manage and oversee public defense services.”

The Council on Public Defense recognized that some smaller jurisdictions may not easily be able to have full-time attorneys to serve as public defense administrators. New Standard Nineteen addresses this:

Jurisdictions unable to employ attorneys with public defense experience to manage and oversee public defense services shall consult with established city, county, or state public defense offices, or engage experienced public defense providers as consultants regarding management and oversight duties.

This provision recognizes that cities and counties can consult with the Washington Office of Public Defense and with veteran attorneys concerning their public defense services. As an example, the City of Edmonds contracts with a former chief public defender to serve as its part-time Assessor for Public Defense Services.

New Standard Nineteen refers to the American Bar Association’s *Ten Principles of a Public Defense Delivery System*. Principle 1 recommends establishing a nonpartisan commission or advisory board to oversee the public defense function, “safeguarding against undue political pressure while also promoting efficiency and accountability for a publicly funded service.”

King County, by charter, has built in considerable independence. The county public defender is appointed by the county executive for a term of years that coincides with

## No lawyer providing public defense services should ever be fired for advocating for their clients or requesting the resources to do so.

that of the prosecutor, with removal only for cause.<sup>9</sup> The defender is expected to “foster and promote system improvements, efficiencies, access to justice and equity in the criminal justice system.” And, “Elected officials shall not interfere with the exercise of these duties by the department ...”<sup>10</sup> There is an advisory board to review the department of public defense and advise the County Executive.<sup>11</sup> The King County model could be followed elsewhere.

In 2010, the Washington Supreme Court wrote, in reversing a juvenile conviction:

While the vast majority of public defenders do sterling and impressive work, in some times and places,

inadequate funding and troublesome limits on indigent counsel have made the promise of effective assistance of counsel more myth than fact, more illusion than substance. Public funds for appointed counsel are sometimes woefully inadequate, and public contracts have imposed statistically impossible case loads on public defenders and require that the costs of experts, investigators, and conflict counsel must come out of the defenders’ own, already inadequate, compensation.<sup>12</sup>

That opinion led to the court’s establishment by court rule of Standards for Indigent Defense, CrR 3.1, based on the Standards recommended by the Council on Public Defense and the WSBA Board of Governors. Those standards have led to significant improvements in funding and in the quality of public defense in the state. But as the Asotin, Grays Harbor, and Cowlitz County examples indicate, significant challenges remain.

For many years, public defenders have too often been derided in popular culture.<sup>13</sup> Because defenders often have far too many cases and are paid by the government, some clients lament having what they call a “public pretender.” But in Washington state, we have some well-organized and well-led local defender offices, top-notch federal defenders, a vibrant Washington Defender Association, a membership group of defenders, and a strong State Office of Public Defense that provides training and coordinates appellate and some specialized trial services.

The independence of the public defense function is more critical than ever. No lawyer providing public defense services should ever be fired for advocating for their clients or requesting the resources to do so. The Office of Public Defense stands ready and willing to assist any county to ensure quality legal representation that upholds the rights of all people facing the loss of liberty or family.

The adoption of the new WSBA Standards for Indigent Defense Services and the proposed GR 42 will help strengthen public defense so that we do not have unacceptable differences in quality based on geography. **BN**

#### NOTES

1. See Radley Balko, "A Pennsylvania county fired its two top public defenders for doing their jobs," *Washington Post*, March 2, 2020, at [www.washingtonpost.com/opinions/2020/03/02/pennsylvania-county-fired-its-two-top-public-defenders-doing-their-jobs/](http://www.washingtonpost.com/opinions/2020/03/02/pennsylvania-county-fired-its-two-top-public-defenders-doing-their-jobs/).
2. See Kent Faulk, "Jefferson County Public Defender departs: Did she resign or was she fired?", March 7, 2019, *Birmingham Real Time News*, at [www.al.com/news/birmingham/2016/07/jefferson\\_county\\_public\\_defend.html](http://www.al.com/news/birmingham/2016/07/jefferson_county_public_defend.html).
3. Draft separation agreement offered to the chief defender, copy on file with authors.
4. See *Matter of Ayerst*, 17 Wn. App. 2d 356, 358, 486 P.3d 943, 945 (2021). The Court of Appeals denied a personal relief petition because it found that there was insufficient proof of the alleged illegal activities by trial counsel and the judge. The Washington Supreme Court has accepted review of the case and it is set for oral argument on May 24, 2022. Supreme Court No. 99939-2 (consolidated with 99941-4). The lawyer stipulated to discipline from the WSBA. In re Robert Jerry Van Idour, Proceeding No. 19#00008, Disciplinary Board, Washington State Bar Association, July 28, 2021, available at <https://mywsba.org/webfiles/cusdocs/000009701210-0/059.pdf>. The Washington Supreme Court suspended him from practicing law or seeking admission in Washington for 18 months. In re Robert Jerry Van Idour, Order Imposing 18 Month Suspension, Supreme Court No. 202,021-6, September 7, 2021, available at <https://mywsba.org/webfiles/cusdocs/000009701210-0/062.pdf>.
5. Grays Harbor County Juvenile Court Case Weighting Policy, September 16, 2014, copy on file with authors.
6. *Davison v. State*, 196 Wn.2d 285, 289, 466 P.3d 231, 234 (2020), as amended on denial of reconsideration (Oct. 20, 2020).
7. Comments on the rule were due by April 30, 2022, with a decision to be made after the deadline for this article.
8. Revised WSBA Standards for Indigent Defense Services, available at [www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/standards-for-indigent-defense-services-approved-by-bog-revised-september-2021.pdf?sfvrsn=b40d17f1\\_4](http://www.wsba.org/docs/default-source/legal-community/committees/council-on-public-defense/standards-for-indigent-defense-services-approved-by-bog-revised-september-2021.pdf?sfvrsn=b40d17f1_4).
9. King County Charter Section 350.20.61, available at [https://kingcounty.gov/council/legislation/kc\\_code/03\\_Charter.aspx](https://kingcounty.gov/council/legislation/kc_code/03_Charter.aspx).
10. King County Charter Section 350.20.60.
11. King County Charter Section 350.20.65.
12. *State v. A.N.J.*, 168 Wn.2d 91, 225 P.3d 956 (2010).
13. "Just listen to any radio talk show and you can hear defenders denigrated, derided, and denounced." Abbe Smith, "Can You Be a Good Person and a Good Prosecutor?" 14 Geo. J. Legal Ethics 355-400 (2001).

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505 P.3d 140 (2022)

(district liability for athlete's sudden cardiac arrest)

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19 Wn. App. 2d 1011 (2021)

(claims of PIP service provider barred under Illinois class settlement)

**Nau v. Vogel,**

19 Wn. App. 2d 1026 (2021) (affirming dismissal of RESPA claims and trial court CR 11 sanctions)

**Griswold v. Fred Meyer Stores,**

18 Wn. App. 2d 1063 (2021) (affirming judgment for premises liability where dolly fell on shopper's foot)

**Mancini v. City of Tacoma,**

196 Wn.2d 864, 479 P.3d 656 (2021)

(holding police may be liable for negligently executing search warrant)

197 Wn.2d 281, 481 P.3d 1084 (2021)

(district responsible for student killed by driver who ran off road striking him during improper off campus walk)

**McLaughlin v. Travelers Com. Ins. Co.,**

196 Wn.2d 631, 476 P.3d 1032 (2020)

(court holds bicyclist is pedestrian for PIP coverage)

**Bao Xuyen Le v. Molina,**

810 Fed. Appx. 550 (9th Cir. 2020) (affirmed rejection of officer qualified immunity in police shooting case)

**Schwartz v. King County,**

14 Wn. App. 2d 915, 474 P.3d 1092 (2020)

(reversed summary judgment in favor of County under rec immunity statute for bike-bollard collision)

**Plein v. USAA Cas. Ins. Co.; Sterling Group,**

195 Wn.2d 677, 463 P.3d 728 (2020)

(RPC 1.9 interpretation)

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# The Importance of Not Misgendering Anyone

Creating an inclusive environment for coworkers and clients

BY IMANI SHANNON

To not be seen as your authentic self is isolating; you feel as if you don't belong.<sup>1</sup> When we misgender and use the wrong pronouns, we contribute to the stigma and "othering" (when someone is labeled as different and treated as inferior) often experienced by persons who have a gender identity beyond the gender binary (either man or woman).

Our language reflects our society. As such, we can use it to create a more inclusive environment where everyone belongs. Part of this work is actively and continuously creating a space where gender and pronouns are not assumed. For lawyers especially, this is a critical part of ensuring

a healthy workplace and happy coworkers and clients.

## SOCIAL AND PERSONAL IDENTITIES

We all have a social identity and a personal identity. Our social identity is how others see and group us into categories based on our race, gender, sexual orientation, disability status, etc. With this categorization often come assumptions about race, gender, and more. Personal identity is our internal sense of self. For example, Person A's social identity, created by other people based on outside appearance, is a Black woman. Person A's personal identity is actually as a Black agender person.<sup>2</sup>

There are times when social and personal identity mesh and times when they do not. Often, people will choose to present as their social identity instead of their personal identity to avoid being scrutinized or judged for existing as they naturally are. This judgment can lead to trepidation and panic about triggering body dysmorphia (the inner turmoil someone experiences when their assigned sex and gender do not match), can cause or exacerbate mental anguish, and can create anxiety about losing employment or suffering physical harm. Part of the work to ensure a more inclusive workplace is to create a space where people can lead with their personal identity without fear of being excluded or physically injured.

## GENDER IDENTITY

Gender is a complex social status, often with societal and cultural expectations around characteristics and behaviors. According to the Human Rights Campaign, gender identity is "one's innermost concept of self as male, female, a blend of both or neither—how individuals perceive themselves and what they call themselves. One's gender identity can be the same or different from their sex assigned at birth."<sup>3</sup>

People are assigned a sex at birth—male, female, or intersex—based on hormones, genitalia, and chromosomes. For some, gender does align with the sex they were assigned at birth (cisgender). For others, gender does not match what they were assigned at birth (transgender). Having only two gender options, male or female, based on sex labels assigned at birth, is how the gender binary continues. Those who openly exist outside of the gender binary are labeled "other," and can be marginalized because of conscious and unconscious biases and ignorance about different gender identities.

There are varying gender identities and experiences for people who fall under the trans umbrella, including but not limited to:

- **Assigned Female at Birth (AFAB):** Sex assignment at birth, equated to their gender (being a woman because of hormones, chromosomes, and genitalia).
- **Assigned Male at Birth (AMAB):** Sex assignment at birth, equated to their gender (being a man because



of hormones, chromosomes, and genitalia.)

- **Trans Woman:** Someone who was assigned male at birth and realized their gender is a woman. Can also be stated as male-to-female (MTF) trans woman.
- **Trans Man:** Someone who was assigned female at birth and realized their gender is a man. Can also be stated as female-to-male (FTM) trans man.
- **Nonbinary:** An umbrella term for gender identities that are neither male nor female and are outside the gender binary. This falls under the trans umbrella in that we are not assigned nonbinary at birth.
- **Genderqueer, genderfluid, agender, bigender, pangender:** Examples of nonbinary identities.

#### PRONOUNS

Pronouns are the words we use in place of someone's name when referring to that person. For example, "She brought up good points that I think we should contact her about." In the past it's been common to assume what the correct pronoun is for someone based on social identity and presumed gender identity. As our language evolves, we need to understand that everyone has the agency to determine for themselves what pronouns they use. Pronouns are not a preference; they are a marker of a person's identity.

While some people may be comfortable sharing their pronouns, not everyone is familiar with how to do this, and others may choose not to (because of personal safety concerns, if their personal identity does not align with their social identity, or for other reasons). Others may want to be referred to by just their name and to not use pronouns. Pronouns may also change for people over time.

They/them is an example of a pronoun set used when she/her and he/him do not accurately reflect a person's identity. However, the use of pronouns outside of the gender binary does not stop there. Neopronouns are a category of new terms that go beyond her, him, and them. Examples of neopronouns include, but are not limited to:

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### Macdonald Hoague & Bayless Welcomes New Attorney

## Lauren I. Freidenberg

Lauren Freidenberg is a senior associate attorney at MacDonalD Hoague & Bayless.

She has been devoted to civil rights litigation since she obtained her license to practice law in California in 2016.

#### At MHB, Lauren's cases include:

wrongful death, excessive force, and violations of the Fourth, Fifth, Eighth, and Fourteenth Amendments against state and federal law enforcement officers/agencies.

#### Lauren's other practice areas include:

public records, employment law, personal injury, and general civil litigation.

### LAWYER ANNOUNCEMENT



MACDONALD HOAGUE & BAYLESS  
CIVIL RIGHTS AND IMMIGRATION ATTORNEYS



### Macdonald Hoague & Bayless Welcomes New Attorney

## Nathaniel Flack

Nathaniel Flack graduated cum laude from the University of Michigan Law School in 2021 and holds a BA from Columbia University.

#### During law school,

Nathaniel successfully represented clients in negotiation and litigation as a student attorney. He helped tenants fight back against potential evictions and their landlords' negligence, successfully obtaining rent reductions, damages settlements, and long overdue repairs.

#### Through his clinical work,

Nathaniel also prepared appellate briefing for appeal of a multicount felony conviction at the Michigan Court of Appeals and successfully represented a laid-off worker in overturning a wrongful denial of benefits at an agency hearing. Prior to law school, Nathaniel worked as an investigator with the City of New York's independent police oversight body, the Civilian Complaint Review Board, investigating cases of excessive force and other serious misconduct by NYPD officers.

### LAWYER ANNOUNCEMENT



# KEN KATZAROFF

*Lewis & Clark Law School*

Shareholder • Legal Services

1420 5th Ave  
Seattle, WA 98101

kkatzaroff@schwabe.com  
www.schwabe.com  
206-405-1985

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Ken Katzaroff was promoted to Shareholder at Schwabe, Williamson & Wyatt. Ken is part of the Natural Resources and Real Estate and Construction industry groups. He represents clients in a variety of real estate development projects across Washington and Oregon, including regulatory approval, subsequent appellate proceedings, land use entitlement, state water rights, and surface mining permitting. His success comes from his care and personal attention to his clients.

LAWYER ANNOUNCEMENT



# SARAH ROUBIDOUX LAWSON

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School of Law*

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**Schwabe**  
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Sarah Roubidou Lawson was promoted to Shareholder at Schwabe, Williamson & Wyatt. Sarah is part of the Indian Country and Alaska Native Corporations and Natural Resources and industry groups. Sarah's work is focused on advising tribal governments, particularly on tribal tax and real estate matters including the fee-to-trust process. She is widely regarded as an authority on issues involving Indian trust land and is an enrolled member of the Iowa Tribe of Kansas and Nebraska.

LAWYER ANNOUNCEMENT

## The Importance of Not Misgendering Anyone

CONTINUED >

- Ze/zir/zirs
- Xe/xem/xyr (pronounced “zee, zem, zeer”)
- Ve/vir/vis

Some people use multiple pronouns; examples can include:

- She/her and they/them
- Ze/zir and he/him
- They/them and she/her and he/him
- Mx. (pronounced “mix”), Ms., and Mr. as honorifics

## INCLUSIVITY AT LAW FIRMS AND WITH GENDER-DIVERSE CLIENTS

It is imperative that workplaces become more accustomed to the ways in which our language is evolving to reflect our society. If we don't make an effort to normalize and use a person's pronouns, we invalidate that person's identity, which puts a strain on how that person moves about the workplace and how they interact with others. Normalizing and using the right pronouns are critical steps in acknowledging the humanity of gender-diverse coworkers and clients.

Misgendering is the act of assuming someone's gender and using incorrect pronouns to refer to that person. For example, if someone uses xe/xir pronouns and we say “I need that report from him,” instead of “I need that report from xir,” this creates a harmful environment that can have detrimental and long-lasting effects on people's mental health and contribute to gender dysphoria. Even if the reference was unintentional, the impact and harm to coworkers and clients is real—for some, it might be equivalent to being told their identity is not being respected.

## WHAT YOU CAN DO

With our coworkers in law firms and when meeting with clients, we can all actively foster a culture of inclusivity by:

- Being attentive to how others refer to someone.
- Introducing ourselves with both name and pronouns.

- Asking for pronouns during screening calls and on client intake forms.
- After learning that someone uses multiple sets of pronouns, making a best effort to use both when referring to that person.
- Starting meetings by inviting everyone to state their name and pronouns.
- Including your pronouns in your email signature.

If you do mistakenly misgender someone, make sure you are centering the person harmed in your response. You can center the person harmed by acknowledging and apologizing for the harm caused, and changing behavior by using the correct pronouns. Also, practice! Whether or not the use of gender-neutral language is familiar to you, continuously practicing and making gender-inclusive language an automatic part of your speech can go a long way—in the workplace and with clients.

Respecting gender-diverse clients at your office is the first step. This also extends to clients you represent in court. You can take actions such as:

- Updating intake forms to include both a client's legal name and preferred name. This is more inclusive for trans clients who have not undergone a legal name change but still want to be referred to by their chosen name.
- Including the correct pronouns in court pleadings, and using a footnote to explain if needed.
- Informing the bailiff and opposing counsel how your client should be addressed.

Being proactive in creating inclusivity helps establish rapport with the client and, more importantly, respects your client's identity.

As we continue to deepen our knowledge surrounding identity and belonging, we can reflect on questions such as: How might the impact of our words differ from our intent? How might our own comfort level, assumptions, expectations, and prior experiences influence beliefs and decisions? Additionally, if we are present when someone is misgendered, how can we call out that behavior while *calling in* the person doing the misgendering? Part of calling out the behavior is to

**Imani Shannon** is an Equity and Justice Lead at the Washington State Bar Association, having volunteered and worked in the civil legal aid space since 2010. After being a Spanish/English translator at a day-laborer center in Portland, Oregon, they have dedicated their career to advocacy for intentionally silenced and systemically oppressed communities. Before joining the WSBA, they coordinated volunteer-based civil legal clinics for low-income clients through the KCBA Neighborhood Legal Clinics, and worked as a bilingual domestic violence case manager.



ensure that we are actively creating a space outside of the gender binary so people are not excluded. Calling in a person to learn more might include asking questions such as, how might the impact of your words/actions differ from your intent, and how might your own comfort level and assumptions be influencing your beliefs and decisions? Calling in the person doing the misgendering is a nonjudgmental effort to open a dialogue, more deeply explore their behaviors, and imagine different possibilities.

It is also important to understand the why: Why are we putting pronouns in social media bios, email signatures, and Zoom names? The goal is to create a place where people under the trans and/or gender-nonconforming umbrellas are able to be their authentic selves. **BN**

#### NOTES

1. The Circle of Human Concern, as defined by Dr. John A. Powell, describes creating a society where we all belong. <https://belonging.berkeley.edu/circle-human-concern-video-curriculum>.
2. Personal and Social Identity: [www.encyclopedia.com/history/dictionaries-thesauruses-pictures-and-press-releases/personal-and-social-identity](http://www.encyclopedia.com/history/dictionaries-thesauruses-pictures-and-press-releases/personal-and-social-identity); <https://psychology.anu.edu.au/files/Abstracts-Presentations-1-Personal-and-Social-Identity-Self-and-Social-Context-Princeton-1992.pdf>.
3. Human Rights Campaign: [www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions](http://www.hrc.org/resources/sexual-orientation-and-gender-identity-terminology-and-definitions).
4. "Ally" and "accomplice" are words often used in social justice work that refer to people who engage in activism alongside others in a marginalized community. "Accomplice" refers to someone who uses their privilege and power to help disrupt the status quo. Another way of putting it: "An ally will listen, an [ ] accomplice will act." <https://pitt.libguides.com/antiracism/ally>.

#### SIDEBAR

### Additional Resources



Many LGBTQ community members and accomplices<sup>4</sup> have contributed to this conversation. These resources can be used to further understanding of the consequences LGBTQ community members may face in our cisgender, heteronormative society.

#### Community and Social Services

- > **Entre Hermanos (Seattle's Latino LGBT Organization):** [entrehermanos.org](http://entrehermanos.org)
- > **Gay City (Seattle's LGBTQ Center):** [gaycity.org](http://gaycity.org)
- > **TransFamilies:** [transfamilies.org](http://transfamilies.org)

#### Gender

- > **A Guide to Being An Ally to Transgender and Nonbinary Youth:** [www.thetrevorproject.org/resources/guide/a-guide-to-being-an-ally-to-transgender-and-nonbinary-youth](http://www.thetrevorproject.org/resources/guide/a-guide-to-being-an-ally-to-transgender-and-nonbinary-youth)
- > **What Does Transgender Mean:** [www.livescience.com/54949-transgender-definition.html](http://www.livescience.com/54949-transgender-definition.html)

#### Legal

- > **Lambda Legal:** [www.lambdalegal.org](http://www.lambdalegal.org)
- > **Lavender Rights Project:** [www.lavenderrightsproject.org](http://www.lavenderrightsproject.org)
- > **QLaw Association:** [qlaw.org](http://qlaw.org)
- > **WA Judges' Bench Guide on the LGBTQ Community and the Law:** [www.courts.wa.gov/committee/pdf/LGBTQ\\_Bench\\_Guide.pdf](http://www.courts.wa.gov/committee/pdf/LGBTQ_Bench_Guide.pdf)

#### Pronouns

- > **How To Talk About Pronouns at Work: A Visual Guide:** <https://hbr.org/2021/09/how-to-talk-about-pronouns-at-work-a-visual-guide>
- > **Pronoun Practice; Printable Resource:** <https://medium.com/@transstyleguide/pronoun-practice-printable-resource-7ab473660b43>

# WSBA Discipline System Annual Report

Annually, the Washington State Bar Association publishes a report on Washington's discipline system. This report summarizes the activities of the system's constituents, including the WSBA's Office of Disciplinary Counsel (ODC) and Office of General Counsel (OGC), the Disciplinary Board, hearing officers, and the Client Protection Fund. The report also provides statistical information about discipline for those licensed to practice law in Washington for the calendar year. These pages provide an informal overview of the 2021 Discipline System Annual Report.



## MORE ONLINE

For more information on the WSBA discipline system go to [www.wsba.org](http://www.wsba.org). To view the full 2021 Discipline System Annual Report, go to [bit.ly/discipline-report2021](https://bit.ly/discipline-report2021).

## STRUCTURE

# How the Lawyer Discipline and Disability System Works

The Washington Supreme Court has exclusive responsibility and inherent authority over regulation of the practice of law in Washington. This authority includes administering the discipline and disability system. Many of the court's disciplinary functions are delegated by court rule to the WSBA, which acts under the supervision and authority of the court. Under the Supreme Court's mandate in General Rule 12.2, the WSBA is committed to administering an effective system of discipline in order to fulfill its obligations to protect the public and ensure the integrity of the profession. The prosecutorial and investigative functions of the discipline system are discharged by ODC, while the adjudicative functions are handled by the Disciplinary Board and hearing officers, which are administered by OGC.



### WSBA Office of Disciplinary Counsel (ODC)

- Answers public inquiries and informally resolves disputes
- Receives, reviews, and may investigate grievances
- Recommends disciplinary action or dismissal
- Diverts grievances involving less serious misconduct
- Recommends disability proceedings
- Presents cases to discipline-system adjudicators



### Hearing Officers (Administered by OGC)

- Conduct evidentiary hearings and other proceedings
- Conduct settlement conferences
- Approve stipulations to admonition and reprimand



### Disciplinary Board (Administered by OGC)

- Reviews recommendations for proceedings and disputed dismissals
- Serves as intermediate appellate body
- Reviews hearing records and stipulations



### Washington Supreme Court

- Exclusive governmental responsibility for the system
- Conducts final appellate review
- Orders sanctions, interim suspensions, and reciprocal discipline

BY THE  
NUMBERS  
PART I

33,386  
Actively  
Licensed Lawyers

14  
Public Formal  
Complaints Filed

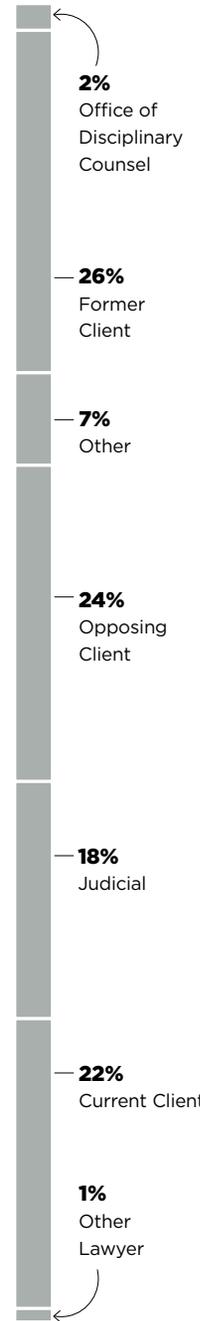
7  
Disciplinary  
Hearings

42  
Disciplinary  
Actions Imposed

1  
Supreme Court  
Opinion



### Sources of Grievances Filed



### BY THE NUMBERS > PART II

1,577

Grievance Files Opened

1,665

Disciplinary Grievances Resolved

108

Non-Communication Matters Informally Resolved

20

File Disputes Informally Resolved

3,309

Public Inquiries, Phone Calls, Emails, and Interviews

### A CLOSER LOOK

## Number and Nature of Grievances

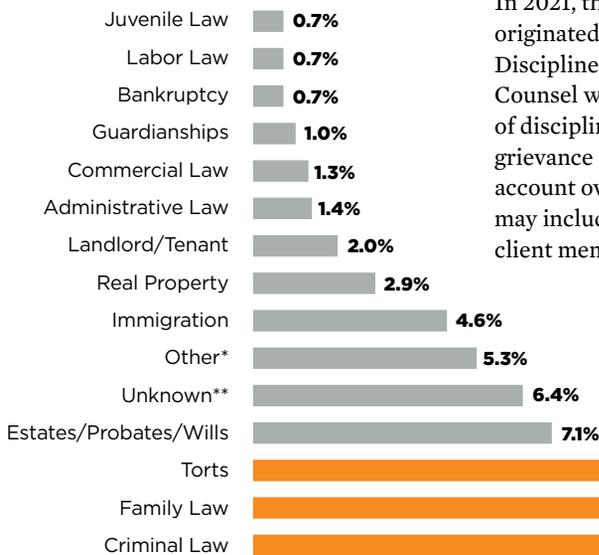
ODC's intake staff receives all phone inquiries and written grievances and conducts the initial review of every grievance.<sup>1</sup> After initial review, some grievances are dismissed, and others are referred for further investigation by ODC investigation/prosecution staff. Grievances that are not dismissed or diverted after investigation may be referred for disciplinary action. When warranted and authorized by a review committee of the Disciplinary Board, these matters are prosecuted by disciplinary counsel with the assistance of professional investigators and a support staff of paralegals and administrative assistants. In 2021, ODC received more than 1,500 grievances.

#### NOTE

- Conflicts Review Officers perform this review when required by ELC 2.7.

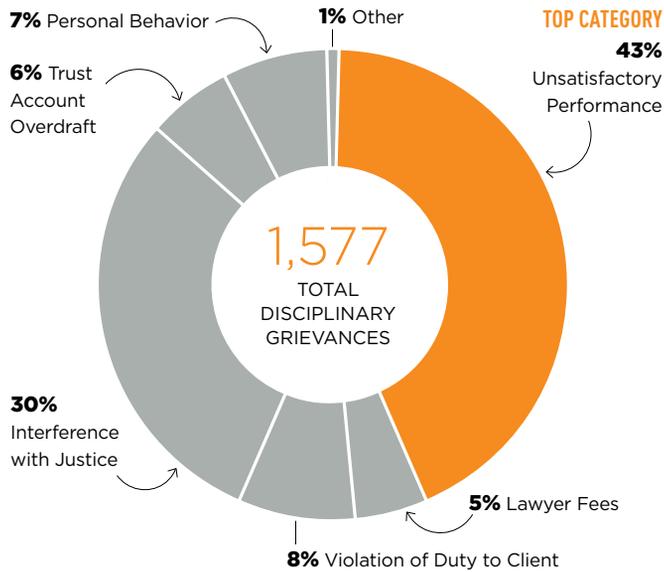
### Practice Areas of Grievances

Top 15 (by highest percentage)



NOTE: \*\*"Other" reflects those practice areas that arise infrequently. \*\*\*"Unknown" captures those grievances where there was too little information to determine a practice area.

### Nature of Grievances



NOTE: "Interference with justice" may include improper contacts with represented parties or judicial officers and misrepresentations to the court. "Personal behavior" may include criminal law violations and other conduct not necessarily related to the practice of law.

## Grievance Filings in Detail

In 2021, the majority of grievances against Washington lawyers originated from current and former clients and opposing clients. Discipline files are opened in the name of the Office of Disciplinary Counsel when potential ethical misconduct comes to the attention of disciplinary counsel by means other than the submission of a grievance (e.g., news articles, notices of criminal conviction, trust account overdrafts, etc.) or through confidential sources. "Other" may include grievances filed by family members, neighbors, non-client members of the public, or other individuals.

62.5% of grievances arose from criminal law, family law, and tort matters.





PANDEMIC RESPONSE

## COVID-19 and the Discipline System

The WSBA’s physical office closed to the public in March 2020 and remained closed until August 2, 2021. After the WSBA’s office closed, the vast majority of WSBA staff began working 100% remotely. Shortly thereafter, the Washington Supreme Court and the Chief Hearing Officer and Disciplinary Board Chair entered orders regarding modified procedures during the pendency of the COVID-19 public health emergency for matters in the licensed legal professional discipline and disability system. The temporary orders allowed for electronic communications as a primary method of communication during the public health crisis.

Although the COVID-19 public health emergency keenly affected the number of grievance filings during calendar year 2020, grievance filing rates have returned to pre-COVID-19 volume. Overall, however, the filing rate remains lower than its previous pre-COVID-19 average.

OTHER COMPONENTS

## LPO and LLLT Discipline System

Limited practice officers (LPOs) and limited license legal technicians (LLLTs) are also authorized to practice law in Washington, through regulatory systems administered by the WSBA. A Washington Supreme Court-mandated regulatory board oversees each limited license. Each licensee is subject to license-specific rules of professional conduct and disciplinary procedural rules. The WSBA administers a discipline system for each of these licenses. At the end of 2021, there were 802 LPOs and 66 LLLTs actively licensed to practice. In 2021, the WSBA received three disciplinary grievances against LPOs and three disciplinary grievances against LLLTs.

## Lawyer Disability Matters

Special procedures apply when there is reasonable cause to believe that a lawyer is incapable of properly defending a disciplinary proceeding, or incapable of practicing law, because of mental or physical incapacity. Such matters are handled under a distinct set of procedural rules. In some cases, the lawyer must have counsel appointed at the WSBA’s expense. In disability cases, a determination that the lawyer does not have the capacity to practice law results in a transfer to disability inactive status. In 2021, five lawyers were transferred to disability inactive status based on an incapacity to practice law. [BN](#)

### 2021 WSBA Discipline System Annual Report

CONTINUED >

A CLOSER LOOK

## Disciplinary Actions Taken

Disciplinary “actions,” which include both disciplinary sanctions and admonitions, result in a permanent public disciplinary record. In order of increasing severity, disciplinary actions are admonitions, reprimands, suspensions, and disbarments. If a lawyer should be cautioned, review committees of the Disciplinary Board have authority to issue an advisory letter, which is neither a sanction nor a disciplinary action and is not public information. For less serious misconduct, ODC may divert a grievance from discipline if a lawyer agrees to a diversion contract, which if successfully completed results in dismissal of the grievance. In 2021, 16 matters were referred to diversion.

In 2021, 41 lawyers were disciplined and one lawyer had more than one disciplinary action, for a total of 42 disciplinary actions.

### Disciplinary Actions

42 TOTAL



### MORE ONLINE

For more information on the WSBA discipline system go to [www.wsba.org](http://www.wsba.org). To view the full 2021 Discipline System Annual Report, go to [bit.ly/discipline-report2021](https://bit.ly/discipline-report2021).

**SGB  
WELCOMES**

## Julie Kline

15 years of trial experience as a King County Homicide Prosecutor. Senior advisor to Seattle Mayor Durkan during globally unprecedented times. Fearless, unflappable, always ready to fight for justice.

### AREAS OF FOCUS

- Violent Crimes
- Sexual Assault & Sexual Harassment
- Serious Injury & Wrongful Death
- Elder and Vulnerable Adult Abuse
- Medical Malpractice



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worker,  
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mesothelioma



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# Need to Know

NEWS & INFORMATION OF INTEREST TO WSBA MEMBERS

## **WSBA NEWS** **Future Structure of the WSBA**

Information about the Board of Governors study process, Examining the Historical Organization and Structure of the Bar (ETHOS), such as the charter, meeting dates, and legal background, can be found at [www.wsba.org/about-wsba/who-we-are/board-of-governors/bar-structure-study](http://www.wsba.org/about-wsba/who-we-are/board-of-governors/bar-structure-study).

## **Engage With WSBA Leaders**

The Member Engagement Council, which seeks member input and involvement in decision-making processes, wants to hear from you! The first agenda item of each meeting (the first Thursday of each month from 1-3 p.m. via Zoom) is reserved for member comments. All topics are welcome. Visit the events calendar at [www.wsba.org](http://www.wsba.org) for more information.

## **Follow Board Meetings and Submit Feedback**

Join the Board meeting notice subscription list to receive WSBA Board of Governors meeting notices straight to your inbox! To join, email [barleaders@wsba.org](mailto:barleaders@wsba.org) or complete the form at [www.wsba.org/about-wsba/who-we-are/board-of-governors](http://www.wsba.org/about-wsba/who-we-are/board-of-governors). Send your feedback to [boardfeedback@wsba.org](mailto:boardfeedback@wsba.org). Please note that all WSBA emails are subject to public records requests.

## **VOLUNTEER** **Volunteer With the WSBA**

The Board of Governors is seeking applications to serve on one of the WSBA's many committees,

 **THE BAR BUZZ** 

## **Take a Short Survey on Parenting and Lawyering**

Please take a short survey on the impact of parenthood on lawyers, even if you are not a parent. The Mother Attorneys Mentoring Association (MAMA) of Seattle is conducting a comprehensive survey on the impact of parenthood on lawyers in private practice in the Seattle area. Scan the QR code above to take the 5-7 minute survey. Please contact [info@mamaseattle.org](mailto:info@mamaseattle.org) with any questions.



boards, and councils. Take a moment to learn about the various volunteer opportunities and find the one that matches your skills and interests. Visit [www.wsba.org/volunteer](http://www.wsba.org/volunteer).

## **Volunteer With the Lawyer Discipline System**

Learn more about volunteering as an adjunct disciplinary counsel (ADC). ADCs assist as needed in carrying out the functions of the lawyer discipline system pursuant to Rule 2.9 of the Rules for Enforcement of Lawyer Conduct. An ADC must have been an active lawyer or judicial member of the WSBA for at least seven years at the time of appointment. Appointment is for a five-year term. Visit [www.wsba.org/adc-panel](http://www.wsba.org/adc-panel) or contact [rachela@wsba.org](mailto:rachela@wsba.org) to learn more.

## **Custodians Needed**

The WSBA is seeking interested lawyers as potential volunteer

custodians of files and records to protect clients' interests. Visit [www.wsba.org/connect-serve/volunteer-opportunities/act-as-custodian](http://www.wsba.org/connect-serve/volunteer-opportunities/act-as-custodian), or contact Darlene Neumann: [darlenen@wsba.org](mailto:darlenen@wsba.org), 206-733-5923, 800-945-9722, ext. 5923.

## **Volunteers Needed as Attorney Advocates**

Unique opportunity to assist families or individuals in crisis by serving as a volunteer attorney advocate on the first-ever national advocacy hotline. Work from home or office at times you choose with hotline calls routed there. Resolution is typically achieved in under an hour. The nonprofit Help Now! Advocacy has assisted at no fee over 8,700 clients, mostly in Oregon, over the past 17 years. The organization is expanding its unique services to a national scope through the hotline. Contact [\[HelpNowAdvocacy.org\]\(http://HelpNowAdvocacy.org\) for more information.](mailto:LMKahn@</a></p></div><div data-bbox=)

## **RESOURCES** **Long-Term Disability Insurance**

Help keep your finances stable in times of need with a group long-term disability (LTD) plan. Get an instant quote by visiting the WSBA Insurance Marketplace, <https://wsba.memberbenefits.com/long-term-disability>.

## **Check Out DEI Resource Library**

The DEI Resource Library is where WSBA members can learn more about diversity, equity, and inclusion concepts. There are compiled resource lists, books, and articles on the criminal legal system, identity and intersectionality, microaggressions/bias, and race. Visit [www.wsba.org/about-wsba/equity-and-inclusion/dei-resource-library](http://www.wsba.org/about-wsba/equity-and-inclusion/dei-resource-library).

## **Practice Guides Available**

Access two practice guides—"The Law Firm Guide to Document Retention" and "The Law Firm Guide to Disaster Planning and Recovery"—as well as other law firm guides and templates at [www.wsba.org/guides](http://www.wsba.org/guides).

## **Free Consultations and Practice-Management Assistance**

The WSBA offers free resources and education on practice management issues. For more information, visit [www.wsba.org/pma](http://www.wsba.org/pma). You can also schedule a free phone consultation with a WSBA practice-management advisor. Visit [www.wsba.org/consult](http://www.wsba.org/consult) to get started.

## Career Consultation

Get help with your résumé, networking tips, and more—[www.wsba.org/for-legal-professionals/member-support/wellness/consultation](http://www.wsba.org/for-legal-professionals/member-support/wellness/consultation)—or email [wellness@wsba.org](mailto:wellness@wsba.org).

## Lending Library

The WSBA Lending Library is open to members for both in-person and online checkouts. We have made a few changes to be aware of. For more information, visit [www.wsba.org/library](http://www.wsba.org/library) or email [lendinglibrary@wsba.org](mailto:lendinglibrary@wsba.org).

## The WSBA is Hiring

To find out more and apply for the various job openings with the WSBA, please visit [www.wsba.org/career-center/work-at-the-wsba](http://www.wsba.org/career-center/work-at-the-wsba).

## Special Discount on WSBA Career Center Through June 2022

Nonprofit, government, and small-firm employers can post job openings on the WSBA Career Center, <https://jobs.wsba.org>, at 50 percent of standard rates. This special discount, offered to prevent pricing from becoming a barrier as the legal community continues to navigate the effects of the COVID-19 crisis, has been extended through June 30, 2022. Contact Mike Credit at 727-494-6565, ext. 3332, or [michael.credit@communitybrands.com](mailto:michael.credit@communitybrands.com) for more information.

## ETHICS Ethics Line

Members facing ethical dilemmas can talk with WSBA professional responsibility

CONTINUED >



### Ryan, Swanson & Cleveland, PLLC

is pleased to announce that

#### John Halski

has joined the firm as an Of Counsel in the firm's Business, Licensing & Technology and Trademarks & Intellectual Property groups.

John's practice includes a full range of brand management services, from trademark clearance to global portfolio maintenance. He works with companies of all sizes to create, build, maintain and protect their intellectual property, including trademarks, trade dress, copyrights, and trade secrets. John also advises nonprofit and advocacy-driven organizations on their unique intellectual property challenges.

206.654.2211 \* [halski@ryanlaw.com](mailto:halski@ryanlaw.com)

**Ryan, Swanson & Cleveland, PLLC** 1201 Third Avenue, Suite 3400, Seattle, WA 98101  
[www.ryanswansonlaw.com](http://www.ryanswansonlaw.com)

## LAWYER ANNOUNCEMENT



## KAINUI SMITH

*University of Hawai'i  
at Manoa School of Law*

Shareholder • Legal Services

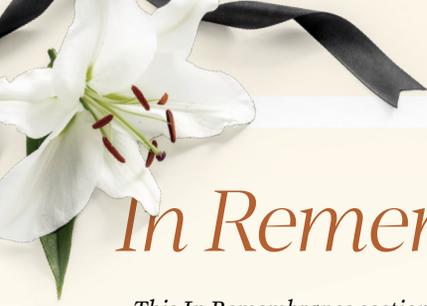
Kainui Smith was promoted to Shareholder at Schwabe, Williamson & Wyatt. Kainui is a member of the firm's Real Estate and Construction industry group. Kainui has handled a variety of cases as both plaintiff and defense counsel through all phases of mediation, arbitration, and litigation. His experience allows him to thoroughly evaluate a matter and develop a case plan to advise clients of their options in relatable terms rather than legalese. Kainui is a Native Hawaiian admitted in Hawaii.

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[www.schwabe.com](http://www.schwabe.com)  
206-407-1567

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## LAWYER ANNOUNCEMENT



# In Remembrance

This In Remembrance section lists WSBA members by bar number and date of death. The list is not complete and contains only those notices of which the WSBA has learned through correspondence from members.

Please email notices to [wabarnews@wsba.org](mailto:wabarnews@wsba.org).

- |  |  |
|--|--|
| <b>Phillip Aaron</b> , #6464, 11/15/2021                     | <b>Frederick Langer</b> , #25932, 12/17/2021       |
| <b>Sergio Armijo</b> , #8663, 1/25/2022                      | <b>James G. Leach</b> , #1382, 6/27/2021           |
| <b>Aloysius Auyeung</b> , #29000, 12/30/2021                 | <b>Richard Levin</b> , #26673, 12/5/2021           |
| <b>Kathryn Barnhouse</b> , #14259, 5/15/2021                 | <b>Mark Leonard Litchman Jr.</b> , #2801, 9/8/2021 |
| <b>Rolf Beckhusen</b> , #5037, 2/5/2022                      | <b>James Maloney</b> , #16909, 10/15/2021          |
| <b>Miles Wilton Carter</b> , #44257, 4/6/2022                | <b>Paul Matte III</b> , #44676, 5/8/2021           |
| <b>Carol Childress</b> , #22928, 12/8/2021                   | <b>Adam Mayo</b> , #55980, 12/18/2021              |
| <b>August Cifelli</b> , #13095, 10/31/2021                   | <b>Randall McGreevy</b> , #8487, 12/14/2021        |
| <b>Lloyd D. Coble</b> , #7324, 1/1/2022                      | <b>Joseph T. Mijich</b> , #1129, 2/12/2022         |
| <b>Patrick Thomas Cooney</b> , #37594, 12/18/2021            | <b>Scott Miller</b> , #31054, 10/15/2021           |
| <b>Jay A. DeMers</b> , #10623, 1/7/2022                      | <b>Brenna Moore</b> , #39878, 10/25/2021           |
| <b>Crystal Dingler</b> , #26741, 11/6/2021                   | <b>Lawrence Nelson</b> , #11576, 1/30/2022         |
| <b>Dan Rodger Dubitzky</b> , #8267, 3/10/2022                | <b>Scott Niebling</b> , #25186, 2/5/2022           |
| <b>Matthew Ryan Eakin</b> , #36568, 2/10/2022                | <b>Mark T. Patterson Sr.</b> , #91, 6/27/2021      |
| <b>Eleanor Hunn Edwards</b> , #2014, 3/12/2022               | <b>Diane Penney-Wagster</b> , #23191, 7/22/2021    |
| <b>Christopher Carson Evans</b> , #4235, 2/7/2022            | <b>Charles Pinnell</b> , #1343, 2/24/2022          |
| <b>Robert Hale</b> , #6607, 11/18/2021                       | <b>Dennis Potter</b> , #27091, 1/28/2022           |
| <b>Harry Hanna</b> , #36182, 11/25/2021                      | <b>Richard Quigley</b> , #4126, 12/21/2021         |
| <b>John Heinemann</b> , #21446, 2/11/2022                    | <b>Debra Suzanne Redford</b> , #20427, 2/5/2022    |
| <b>Lawrence Hildes</b> , #35035, 11/20/2021                  | <b>Michael Roewe</b> , #5799, 5/16/2021            |
| <b>Charles Eugene Huppini</b> , #2736, 4/1/2022              | <b>Kenneth Russell Scarse</b> , #17818, 1/15/2022  |
| <b>Evan Jacoby</b> , #18423, 10/25/2021                      | <b>Helmut Schweiger</b> , #22521, 10/30/2021       |
| <b>Richard Johnson</b> , #6481, 3/26/2021                    | <b>Deborah Senn</b> , #8987, 2/18/2022             |
| <b>Stephen Kantor</b> , #39956, 11/14/2021                   | <b>Robert Harold Stevenson</b> , #519, 4/10/2022   |
| <b>Anne Johnson Kenefick</b> , #18375, date of death unknown | <b>Suzanne J. Thomas</b> , #17338, 9/28/2022       |
| <b>Stephen Mark Klein</b> , #10761, 4/16/2022                | <b>Matthew Weber</b> , #31308, 1/12/2022           |
| <b>Gregory Kosanke</b> , #8936, 1/23/2022                    | <b>Richard Wickham</b> , #33812, 11/2/2021         |
| <b>William Lane</b> , #33122, 1/10/2022                      | <b>Norman L. Winn</b> , #2291, 12/2021             |

## MORE ONLINE

When available, links to obituaries can be found in the online version of this article.

## Need to Know

CONTINUED >

counsel for informal guidance. Learn more at [www.wsba.org/for-legal-professionals/ethics/ethics-line](http://www.wsba.org/for-legal-professionals/ethics/ethics-line) or call the Ethics Line at 206-727-8284.

## WSBA Advisory Opinions

WSBA advisory opinions are available online at [www.wsba.org/for-legal-professionals/ethics/about-advisory-opinions](http://www.wsba.org/for-legal-professionals/ethics/about-advisory-opinions). For assistance, call the Ethics Line at 206-727-8284.

## WSBA MEMBER WELLNESS

### Telehealth is Here!

The Member Wellness Program is now offering hi-def, HIPAA-protected video consultations using the telehealth portal Doxy.me. Visit [www.wsba.org/for-legal-professionals/member-support/wellness](http://www.wsba.org/for-legal-professionals/member-support/wellness) and click "Book Your Initial Consultation" to schedule time with our licensed providers.

### Judges Need Help Too

The Judicial Assistance and Services Program (JASP) provides confidential support for judges, or those who are concerned about a judge. Contact Susanna Kanther, Psy.D., at 415-572-3803. Visit [www.wsba.org/for-legal-professionals/member-support/wellness/judicial-assistance-service-program](http://www.wsba.org/for-legal-professionals/member-support/wellness/judicial-assistance-service-program).

### The 'Unbar' Alcoholics Anonymous Group

The Washington Unbar Alcoholics Anonymous group for legal professionals has been holding meetings for almost 30 years. The group meets Wednesdays, 12:15-1:30 p.m., and Sundays, 7-8 p.m. Currently, the group meets online via Zoom, and attorneys from all over Washington participate. For more information and Zoom credentials contact [unbarwa@gmail.com](mailto:unbarwa@gmail.com).



## WSBA COMMUNITY NETWORKING

### Sign Up for Low Bono

The Moderate Means Program connects moderate income clients with family, housing, consumer law, and unemployment cases to legal professionals who offer reduced fees. Family law lawyers and LLLTs are especially needed due to a backlog of cases stemming from the COVID-19 pandemic. Find out more at [www.wsba.org/connect-serve/volunteer-opportunities/mmp](http://www.wsba.org/connect-serve/volunteer-opportunities/mmp) or email [publicservice@wsba.org](mailto:publicservice@wsba.org).

### New Lawyers List Serve

This list serve is a discussion platform for new lawyers of the WSBA. To join, email [newmembers@wsba.org](mailto:newmembers@wsba.org).

### ALPS Attorney Match

Attorney Match is a free online networking tool made available through the WSBA-endorsed professional liability partner, ALPS. Learn more at [www.wsba.org/connect-serve/mentorship/find-your-mentor](http://www.wsba.org/connect-serve/mentorship/find-your-mentor), or email [mentorlink@wsba.org](mailto:mentorlink@wsba.org).



## QUICK REFERENCE

### June 2022 Usury

The usury rate for June 2022 is 12%. The auction yield of the May 2, 2022, auction of the six-month Treasury Bill was 1.45%. The interest rate required by RCW 4.56.110(3)(a) and 4.56.115 for May 2022 is 3.45%. The interest rate required by RCW 4.56.110(3)(b) and 4.56.111 for May 2022 is 5.5%. [BN](#)

## HAVE SOMETHING NEWSWORTHY TO SHARE?

Email [wabarnews@wsba.org](mailto:wabarnews@wsba.org) if you have an item you would like to place in Need to Know.



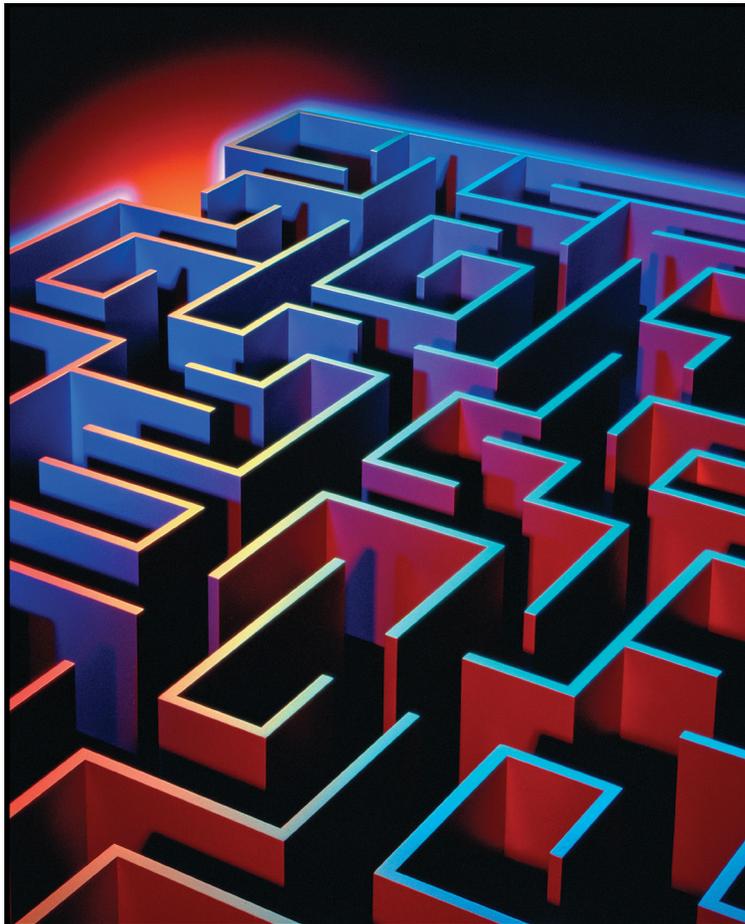
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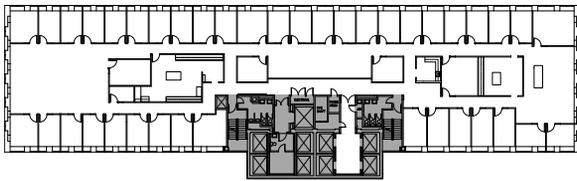
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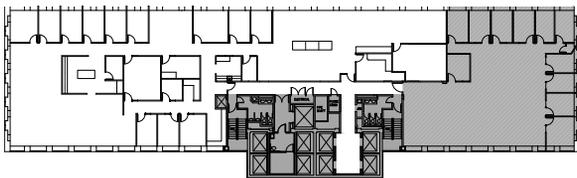
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# Notices

DISCIPLINE & OTHER REGULATORY NOTICES

## THESE NOTICES OF THE IMPOSITION OF DISCIPLINARY SANCTIONS AND ACTIONS

are published pursuant to Rule 3.5(c) of the Washington Supreme Court Rules for Enforcement of Lawyer Conduct. Active links to directory listings, RPC definitions, and documents related to the disciplinary matter can be found by viewing the online version of *Washington State Bar News* at [www.wabarnews.org](http://www.wabarnews.org) or by looking up the respondent in the legal directory on the WSBA website ([www.wsba.org](http://www.wsba.org)) and then scrolling down to "Discipline History."

*As some WSBA members share the same or similar names, please read all disciplinary notices carefully for names, cities, and bar numbers.*

## Resigned in Lieu of Discipline

**Robert S. McKay** (WSBA No. 19667, admitted 1990) of Langley, resigned in lieu of discipline, effective 3/22/2022. McKay agrees that he is aware of the alleged misconduct in disciplinary counsel's Statement of Alleged Misconduct and rather than defend against the allegations, wishes to permanently resign from membership in the Association. The Statement of Alleged Misconduct reflects the following violations of the Rules of Professional Conduct: 1.6 (Confidentiality of Information), 1.7 (Conflict of Interest: Current Clients), 8.4(c) (Dishonesty, Fraud, Deceit or Misrepresentation), 8.4(i) (Moral Turpitude, Corruption or Disregard of Rule of Law).

McKay's alleged misconduct, as stated in disciplinary counsel's Statement of Alleged Misconduct, related to his representation of a client in a criminal matter, and subsequent relationship and interactions with the mother of the alleged victim (A) in that matter. McKay's alleged misconduct includes: 1) disclosing confidential client files to A; 2) representing A's husband without obtaining informed consent regarding the potential conflict of interest based on McKay's relationship with A; 3) making misleading statements to the prosecutor in A's hus-

band's case; and 4) threatening to publish explicit images of A on the internet.

Francisco Rodriguez acted as disciplinary counsel. Kurt M. Bulmer represented respondent. The online version of *Washington State Bar News* contains a link to the following document: Resignation Form of Robert S. McKay (ELC 9.3(b)).

## Suspended

**Matthew Erik Johnson** (WSBA No. 43808, admitted 2011) of Marysville, was suspended for 24 months, effective 3/25/2022, by order of the Washington Supreme Court. Johnson's conduct violated the following Rules of Professional Conduct: 1.1 (Competence), 1.3 (Diligence), 3.3 (Candor Toward the Tribunal), 7.1 (Communications Concerning a Lawyer's Services).

In relation to his practice in bankruptcy law, Johnson stipulated to suspension for: 1) failing to provide competent representation to clients in multiple bankruptcy matters; 2) failing to diligently represent clients in multiple bankruptcy matters; 3) failing to promptly disclose a false statement in a Certificate of Service to the court after coming to know of its falsity; and 4) omitting the required bankruptcy relief disclosures from his website.

Henry Cruz acted as disciplinary counsel. Kevin M. Bank represented respondent. The online version of *Washington State Bar News* contains links to the following documents: Disciplinary Board Order Conditionally Approving Stipulation; Joint Consent Under ELC 9.1(e)(2); Stipulation to Suspension; and Washington Supreme Court Order.

## Admonished

**Gerald John Moberg** (WSBA No. 5282, admitted 1973) of Ephrata, was ordered to receive an admonition, effective 3/14/2022, by order of the chief hearing officer. Moberg's conduct violated the following Rules of Pro-

fessional Conduct: 8.4(d) (Prejudicial to the Admin of Justice).

In relation to his involvement in the 2014 Grant County Prosecutor election, Moberg stipulated to an admonition for failing to disclose his role as the source of payment for a campaign mailer when testifying under oath during a Public Disclosure Commission investigation.

Joanne S. Abelson acted as disciplinary counsel. Jeffrey T. Kestle represented respondent. The online version of *Washington State Bar News* contains links to the following documents: Order Approving Stipulation; Stipulation to Admonition; and Admonition.

## Interim Suspension

**Dale Ray Cook** (WSBA No. 31634, admitted 2001) of Tacoma, is suspended from the practice of law in the state of Washington pending the outcome of supplemental proceedings, effective 3/18/2022, by order of the Washington Supreme Court. ***This is not a disciplinary sanction.***

**Dominique Louise Eng Jinhong** (WSBA No. 28293, admitted 1998) of Tacoma, is suspended from the practice of law in the state of Washington pending the outcome of disciplinary proceedings, effective 3/11/2022, by order of the Washington Supreme Court. ***This is not a disciplinary sanction.***

**John Franklin Sherwood** (WSBA No. 2948, admitted 1962) of Bellevue, is suspended from the practice of law in the state of Washington pending the outcome of supplemental proceedings, effective 4/07/2022, by order of the Washington Supreme Court. ***This is not a disciplinary sanction.*** 

## MORE ONLINE

Access further details of the notices by clicking the links in the online version:

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(See, e.g.):

- *Ground Zero v. United States Navy*, 860 F.3d 1244 (9th Cir. 2017)
- *Seattle v. Long (2021)*
- *Witt v. the Air Force*, 527 F.3d 806 (9th Cir. 2008)
- *Daybreak Youth Services (2021)*
- *Bonivert v. Clarkston*, 883 F.3d 865 (9th Cir. 2018)

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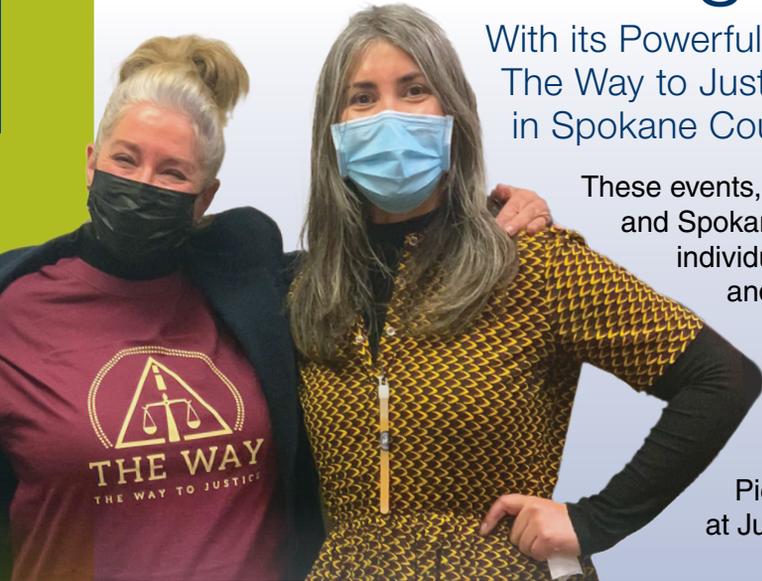
# Justice Nights Are Back!

With its Powerful Communities Project grant, The Way to Justice relaunched Justice Nights in Spokane County.

These events, held in partnership with the Carl Maxey Center and Spokane County Bar Volunteer Lawyers Program, pair individuals navigating legal issues with volunteer attorneys and legal technicians for expert legal advice.

Justice Night is a significant resource in the community, opening access to the legal system for all, as well as sharing information from other nonprofit service providers.

Pictured: Theresa Cronin and Camerina Zorrozua at Justice Night



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is pleased to announce that

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have joined the firm as **Associates**.

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**Wendy L. Allard, J.D. / LL.M. IN TAXATION,**  
has joined the firm as a shareholder.

Wendy’s practice focuses on estate planning, probate, and business transactions. Wendy has extensive experience planning for and managing a wide variety of estates from the less complicated to the highly sophisticated.

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**LAWYER ANNOUNCEMENT**



# Judith Shulman

BAR NUMBER: 11179

I am a wine lawyer and co-owner of DAMA Wines, a certified women-owned and managed winery in Walla Walla. Previously a partner in a major Seattle firm, I took a 20-year break to start my own business, a woman-owned “landman” company (the term “landman” refers to a person who assists government, railroads, and utility companies in acquiring land or right-of-way for upcoming projects). The company had 75 employees when I sold it and relocated to Walla Walla, where I resumed my practice and enjoy wine.

### How do you define success as a lawyer?

At my age, success in law and in life is measured by the friendships with colleagues and clients I respect. With the wisdom that comes from working for so many years, I believe legal services, like any product, must add value to the purchaser. This is achieved through a sincere desire to help, understand, problem solve, and communicate. Projects begin and end, but relationships with good people build a sense of success.

### What is your best piece of advice for someone who has just entered law school?

Becoming an attorney is a gateway to opportunities. A law degree is useful in any career and in so many of life’s

challenges. Try not to be intimidated by peers and obstacles. Acquire as much knowledge as you can, and then have the courage to follow your heart and your passions.

### How did you become interested in your practice area?

I am fairly sure I have undiagnosed attention-deficit disorder. I was drawn to law because of the variety, and I learned that a good business lawyer had to understand all about the business represented. Wine tasting drew me to Walla Walla, where I learned that a lifetime of legal work and experiences were no match for the challenge of growing a successful winery business. **BN**



If you had to give a 10-minute presentation on one topic other than the law, what would it be and why?

The challenges for women working in or owning businesses, especially businesses that are historically male-dominated.

If you could go back in time, where/when would you go?

I would go back to high school, but only if I could go with the self-esteem and vision I lacked at the time.

What is one thing your colleagues may not know about you?

I have at least one great horned owl living on my property.

What book have you read more than once?

*The Name of the Rose* by Umberto Eco

What is your best random fact that you would share with others at a party?

Since the earliest days of winemaking, the industry has been male-dominated and women have been systematically excluded from the process. Until recently, some wineries in France did not allow women near fermenting wine because of the belief that if the woman is menstruating, the wine might turn to vinegar.

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